



MEMORANDUM

TO: Parks and Recreation Board Members

FROM: Michael J. Heitz, AIA, Director
Parks and Recreation Department

DATE: July 19, 1994

SUBJECT: Kendra Page Park Improvements

Kendra Page Park is located across from Langford Elementary School at 2203 Blue Meadow Drive in South Austin. In the 1982 Capital Improvement Bond Election \$50,000 was approved by the citizens of Austin for park improvements to what was then known as Langford Park. In FY 91 an additional \$100,000 was made available. Parkland Dedication funds in the amount of \$4,000 have also been set aside for the project. Approximately \$8,000 of the funds has been spent on the installation of a concrete sidewalk along the Stoneleigh Drive right of way and on site clearing. In the spring of 1993 the Parks and Recreation Department began meeting with the Langford PTA and the Silverstone Neighborhood Association to determine the type of improvements to be made to the park and to discuss the rezoning of the property to 'Public'.

In October 1993 a meeting was held at Langford Elementary with the Langford PTA, the Silverstone Neighborhood Association, and representatives from the Parks and Recreation Department. The citizen's groups agreed on the following list of park improvement items in order of priority:

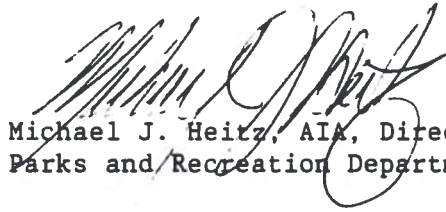
- Playscape and Totlot
- Hardscape Trail Linking the Existing Concrete Path to the
Proposed Playscape
- Sand Volleyball Court
- Picnic Tables and Grills
- Drinking Fountain
- Nature Trail (Cleared Path with no Hard Surfacing)
- "Nightwatchman" Lighting on Existing Poles

Currently, the Construction Drawings are in revision to satisfy City of Austin permitting requirements and to respond to a request from the neighborhood association to relocate the Sand Volleyball Court to a site more removed from the street. The estimated total cost of the project is \$146,000. The relocation of the Sand Volleyball Court resulted in an increase of approximately \$8,000 to the project (including tree removal, tree planting, sidewalk demolition, and design time). The overage will result in a reduction of length of sidewalk, reduction in size of rubberized safety surfacing, and the cost of the trees will be assumed by the Forestry Division.

Before construction can begin, the Planning Commission must approve a Conditional Use Permit and a Small Project Development Permit. Relocation of the Volleyball Court will cause an anticipated two week delay in the appearance at Planning Commission beyond the scheduled date of July 26, 1994. On the current schedule, construction of the project should begin in August 1994 and be complete in November 1994.

An abandoned fuel storage tank was removed from the site in July 11, 1994. Soil reports received July 18, 1994 show that no further abatement of the tank area is necessary.

Please let me know if you need any additional information on this project.

A handwritten signature in black ink, appearing to read "Michael J. Heitz", is written over the typed name and title.

Michael J. Heitz, AIA, Director
Parks and Recreation Department

AUSTIN TREE SPECIALISTS

2307 West Ninth Street

Austin, Texas 78703

474-6614

July 6, 1994

Jodi Hamilton
Parks Board
200 South Lamar
Austin, Texas 78704

Dear Jodi;

The Urban Forestry Board has been working for the last eighteen months preparing an ordinance that governs the care of trees on city property. We have met with all of the city departments (ECSD, Electric Dept., Parks Dept. Water/Waste Dept., Street & Bridge Dept., Public Works Dept., City Legal Dept.) that will be impacted by this ordinance and they are all in agreement with the ordinance.

We would like to now present this to the Parks Board for their input, comments, and any suggestions and answer any questions they may have concerning the ordinance. We are also taking the ordinance before the Environmental Board and the Planning Commission for their input as well.

Enclosed is a copy of the proposed ordinance and some related back up material.

We are scheduling a public hearing of the ordinance prior to sending this to council. The first hearing will be Tuesday, August 2, 1994 at 6:00 PM at the Parks and Recreation Department Headquarters Board Room at 200 South Lamar. A second hearing is scheduled for Wednesday, August 31, 1994 at 6:00 PM at the same location.

We hope to send this on to City Council in late September or early October.

Sincerely;



Patrick Wentworth
Urban Forestry Board
Chairman 1994



DRAFT PUBLIC TREE CARE ORDINANCE

Review Materials

CONTENTS:

- 1. Draft Public Tree Care Ordinance**
- 2. Ordinance Explanation**
- 3. Appendix**

**Austin Urban Forestry Board
Patrick Wentworth, Chair
2307 West 9th Street
Austin, Texas 78703
474-6614
July 8, 1994**

ORDINANCE NO. 94 _____

AN ORDINANCE REGULATING THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES ON PUBLIC PROPERTY; ESTABLISHING THE OFFICE OF URBAN FORESTER; PROVIDING FOR THE ISSUANCE OF PERMITS FOR THE PLANTING, MAINTENANCE, AND REMOVAL OF TREES ON PUBLIC PROPERTY; PROVIDING FOR THE REMOVAL OF VEGETATION ON PRIVATE PROPERTY WHICH OBSTRUCTS PUBLIC TRAVEL OR THREATENS PUBLIC SAFETY; PROVIDING FOR THE PROTECTION OF PUBLIC TREES; PROVIDING FOR VALUE RECOVERY WHEN PUBLIC TREES ARE DAMAGED OR REMOVED; PROVIDING FOR TREES AS PART OF STREET IMPROVEMENTS; PRESCRIBING PENALTIES FOR VIOLATIONS OF ITS PROVISIONS; REPEALING SECTIONS 16-7-40, 16-7-41, 16-7-42, 16-7-43, 16-7-44, 16-7-45; WAIVING SECTION 2-2-3 OF THE CITY CODE; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City may pass and enforce ordinances necessary for the protection of the health, welfare and safety of its residents and visitors; and,

WHEREAS, the City has dominion, control and jurisdiction over its public streets and parks; and,

WHEREAS, there are over 160,000 trees located on the streets and parks of the City which provide social, aesthetic, environmental, economic and health benefits to the City and its residents; and,

WHEREAS, a study conducted for the City Council recommended the enactment of an ordinance protecting and promoting the City's urban forest; and,

WHEREAS, many cities have successfully enacted and enforced similar ordinances throughout the state and the nation, NOW, THEREFORE,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. That the Code of the City of Austin of 1992 is hereby amended by adding a new Chapter 15-9 as follows:

Section 15-9-1 Short Title.

This Ordinance shall be known and cited as the Public Tree Care Ordinance.

Section 15-9-2 Purpose and Intent.

A. The purpose of this Chapter is to promote and protect the public health, safety, and general welfare by regulating the planting, maintenance and removal of trees located on streets, parks and public areas owned or controlled by the City of Austin. The application and enforcement of this ordinance shall be coordinated with existing ordinances.

B. It is the intent that this Chapter shall promote:

(1) The protection of the City of Austin, its residents and visitors from harm caused or threatened by the improper planting, maintenance, or removal of trees; and

(2) The planting, maintenance, restoration, and protection of desirable trees on public property, thereby enhancing the appearance of the City and protecting the urban forest as an important social, environmental and economic resource for the benefit of the City's residents and visitors; and

(3) The assistance of property owners and public agencies in protecting and maintaining trees in a manner consistent with adopted City policies, procedures and regulations.

Section 15-9-3 Definitions.

A. *Urban Forester* is the qualified designated official assigned to carry out the enforcement of this Chapter.

B. *Property Line* shall mean the outer edge of a street or highway right-of-way.

C. *Public Property* shall include all grounds owned or controlled by the City of Austin not restricted to public access. Utility and drainage easements on private property, and areas restricting public access shall not be included in the definition of public property as used in this Chapter.

D. *Damage* shall mean any serious injury to a tree. Damage shall include uprooting, severance of the root system, severance of the main trunk, the storage of materials or the compaction of soil around a tree, a substantial change in the natural grade above the root system or around the trunk; excessive pruning; and the paving with impervious materials around a tree.

E. *Tree* means any self-supporting, woody perennial plant typically having a trunk diameter of at least three inches measured at twelve inches above grade or having a trunk diameter of at least two inches if planted by or for the City.

F. *Treelawn* is any unpaved part of a street or highway, lying between the property line and that portion of the street or highway usually used for vehicular traffic.

G. *Tree Value* is the appraised value of a tree based on the latest edition of the "Guide for Plant Appraisal" by the Council of Tree and Landscape Appraisers or a similarly accepted guide.

H. *Utility* means public utilities, businesses or organizations in the business of supplying electrical energy; gas, heat or steam, water, communications, or other services through or associated with telephone or telegraph, sewage disposal and treatment, and other operations for public service.

Section 15-9-4 Duties and Authority of Urban Forester.

There shall be an Urban Forester position filled by a qualified forester. The Urban Forester shall:

A. Preserve and enhance the urban forest.

B. Develop and periodically update rules, regulations, specifications and standards of practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees and shrubs on public property. Arboricultural specifications and standards of practice shall be based on the most current edition of the National Arborists Association's Standards for Tree Care or other nationally recognized standard and shall have been reviewed and approved by the Urban Forestry Board prior to implementation. Copies of all rules, regulations, specifications and standards shall be available to the public.

C. Manage the City of Austin Urban Forestry Program.

D. Enforce the provisions of this ordinance to control and regulate the planting, maintenance, and removal of trees on public property to insure safety and preserve the aesthetics of such public sites.

E. Provide administrative staff support to the Urban Forestry Board.

F. Supervise and inspect all work done under a permit issued under this Chapter.

G. Affix reasonable conditions to the granting of permits.

H. Assist the Urban Forestry Board with formulating a Comprehensive Urban Forest Plan. The Comprehensive Urban Forest Plan shall specify the planting, maintenance, and removal of trees on streets or other public areas. The Urban Forester, with the approval of the Urban Forestry Board, shall have the authority to amend or add to the Comprehensive Urban Forest Plan at any time that circumstances make it advisable. The Comprehensive Urban Forest Plan shall guide the City in promoting and preserving its urban forest.

I. Administer and monitor the implementation of the Comprehensive Urban Forest Plan.

J. In coordination with affected City departments, plant or cause to be planted trees on public property.

K. Maintain and remove as necessary trees on public property.

L. Carry out such other duties as may be specified in this Chapter or in this Code.

Section 15-9-5 Permits.

A. (1) Unless otherwise directed or permitted by another applicable permit or license, no person shall plant, maintain, remove, or damage any tree on public property without procuring a permit from the Urban Forester as specified in this section. Permits under this Chapter shall be issued free of charge.

(2) Application for permits shall contain such information as the Urban Forester shall require and shall be made at the office of the Urban Forester not less than five (5) working days in advance of the time the work is to be done.

(3) The Urban Forester shall issue a permit upon a determination that the proposed work is desirable and the proposed method and workmanship are in accordance with this Chapter and adopted arboricultural standards. Any permit granted shall contain a date of expiration and the work shall be completed in the time allowed on the permit and in the manner therein described. A permit shall be void if its terms are violated.

(4) Notice of completion of the work shall be given within five (5) working days to the Urban Forester. Notice of completion of work done under an annual permit shall be provided monthly or quarterly at the discretion of the Urban Forester.

B. The Urban Forester shall be authorized to remove any tree or vegetation found to have been planted in violation of this Chapter or regulations adopted hereunder. The cost of removal shall be assessed and collected from the person responsible for planting such tree or vegetation.

C. (1) No permit may be required of any City department or contractor employed by a City department engaged in tree pruning or maintenance provided that the work is completed according to the arboricultural specifications and standards approved by the Board under § 15-9-4.B.

(2) An annual permit shall be issuable to any person that engages in the pruning or maintenance of trees of public property. Issuance of an annual permit shall be expressly conditioned on compliance with City-adopted arboricultural specifications and standards of practice. A permit may be denied if the applicant has a demonstrated history of violating the provisions of this Chapter. An annual permit shall not authorize the removal of trees.

D. As a condition of the issuance of a permit for the removal of a tree, the Urban Forester may require the planting of replacement trees or provisions therefore. In the event a permit holder agrees to plant a replacement tree and such a replacement tree is not timely replanted, the Urban Forester may collect the value of such trees or may plant such tree and assess and collect the costs from the person issued the permit. Funds collected shall be deposited in the City of Austin Planting for the Future Fund Trust.

E. (1) No permit shall be required to remove any tree or limb under emergency conditions. An emergency shall be deemed to exist during such time as a hazardous or dangerous condition exists because a tree or limb has fallen or is in imminent danger of falling. A person may remove fallen limbs or trees blocking pedestrian or vehicular travel.

(2) No permit shall be required of a public utility to remove trees or limbs which have fallen, or are in imminent danger of falling, if removal is necessary to restore service or to prevent damage to utility lines or facilities.

F. The Urban Forester shall be authorized to revoke a permit for violations of this Chapter, or regulations adopted hereunder, or for good cause. Written notice and an opportunity to be heard shall be provided to permit holders before the revocation of a permit.

Section 15-9-6 Obstructions.

A. It shall be unlawful for the owner or occupant of any property adjacent to a public street or sidewalk to allow any tree, shrub or vegetation growing on his property to obstruct traffic visibility or signs, or the free passage on such street or sidewalk. Such owner or occupant shall maintain trees, shrubs or vegetation growing on his property so as to provide a vertical clearance of at least eight feet over sidewalks and 14 feet over streets.

B. The Urban Forester shall issue written notices to owners or occupants requiring the removal or clearance of trees, shrubs or vegetative matter under subsection A. If an owner or occupant fails to remove or clear such vegetation within 10 days of receipt of the notice, the Urban Forester shall be authorized to remove or clear such vegetation and to assess and collect expenses against the owner or occupant. The Urban Forester shall be authorized to remove obstructions at any time. The City shall have a lien against the property for expenses of removal or clearance provided the owner and lienholders have received notice to abate the obstructions and have received an opportunity to perform removal or clearance. The City's lien shall become effective upon its recordation in the real property records of the county in which the property is located.

C. (1) The owner or the occupant of any corner lot shall not place, maintain or permit or cause to be placed or maintained any plant having a height greater than two (2) feet above the ground on which the plant is situated on or in that portion of any corner which portion includes all property ten (10) feet back from the curblines and forty (40) feet on either side from the street corner intersection of the curblines.

(2) The owner or the occupant of any property in the City shall not place, maintain or permit or cause to be placed or maintained thereon any tree or shrub within five feet of any fire hydrant in the City.

Section 15-9-7 Protection of Trees.

A. Except as provided in subsection C., below or unless authorized by other written permit issued by the City:

(1) No person shall excavate any ditch, tunnel or trench deeper than one (1) foot or lay any drive within a radius ten (10) feet from any tree on the treelawn.

(2) No person shall damage, top, cut, carve, transplant, or remove any tree on public property, allow any gas, liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof may injure any portion of any such tree.

(3) No person shall deposit, place, store, or maintain upon public property any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, or fertilizer to the roots of any tree growing thereon.

B. Unless otherwise directed or permitted by other applicable ordinances or rules, a person conducting excavation or construction on public property shall see that each tree is guarded with a good substantial fence, not less than four (4) feet high and two feet out from the tree. All building material, dirt, other debris shall be kept outside the barrier.

C. No permit shall be required for work immediately necessary to protect the public health or safety, or to repair broken or damaged utility lines or to restore utility services.

Section 15-9-8 Loss of Public Trees -Value Recovered.

A. A person damaging a tree on public property shall be liable to the City for any loss of value. In the event damage is so pervasive as to result in the treatment or removal of the tree, the person damaging such tree shall also be liable for costs of treatment or removal. A person may appeal the Urban Forester's determination of value to the Urban Forestry Board under the procedures established in subsection 15-9-10.

B. Amounts recovered under this section shall be deposited in the Planting for the Future Trust Fund.

Section 15-9-9 Capital Improvements.

The Urban Forester shall participate in the planning or designing of major capital improvements to the road system to ensure the inclusion of trees as part of the road design. One percent of the costs of each road system capital improvement project shall be devoted to the planting of trees.

Section 15-9-10 Appeals.

A. An applicant or permit holder shall have the right to appeal the conditions, denial or revocation of a permit to the Urban Forestry Board upon the filing of a written appeal to the Urban Forestry Board within 10 days of the granting, denial or revocation of a permit. The Urban Forestry Board shall hold a hearing within 30 days of receipt of the appeal. The appellant shall be notified of the date of the hearing and shall be allowed to present evidence and testimony. The Urban Forestry Board shall uphold, reverse or modify the decision of the Urban Forester.

B. A person determined to be liable to the City under Sections 15-9-5 or 15-9-8 shall have the right to appeal the determination to the Urban Forestry Board upon the filing of a written appeal to the Urban Forestry Board within 10 days of notice of liability. The Board shall conduct a hearing in the same manner specified in subsection A above.

C. A decision of the Urban Forestry Board rendered under Subsections A or B above shall be appealable to the City Council by filing a written notice of appeal within 10 days of the rendering of the decision. The notice shall be filed with the Urban Forester and shall specify the grounds of the appeal. The City Council shall proceed to conduct a hearing within 30 days or at the earliest opportunity and shall uphold, reverse or modify the decision of the Urban Forestry Board after such hearing.

Section 15-9-11 Interference With Urban Forester.

No person shall hinder, prevent, delay, or interfere with the Urban Forester or any of his/her assistants while engaged in carrying out the execution or enforcement of this Chapter.

Section 15-9-12 Violation and Penalty.

A violation of the provisions of this ordinance shall be punishable by fine. Upon conviction, persons shall be assessed fines in accordance with Chapter 1-1-99 of the City Code. Each day a violation of this Chapter continues constitutes a distinct and separate offense.

PART 2. Article II of Chapter 16-7 (§§ 16-7-40 to 16-7-45) is hereby repealed.

PART 3. The requirement of Section 2-2-3, Code of the City of Austin, 1992, that ordinances be read on three (3) separate days shall be hereby waived by the affirmative vote of five (5) members of the City Council to pass this ordinance through more than one reading on a single vote.

PART 4. This Ordinance shall become effective upon the expiration of ten (10) days from its enactment, as provided by the Charter of the City of Austin.

PASSED AND APPROVED

_____, 1994

Bruce Todd
Mayor

APPROVED:

Diana L. Granger
City Attorney

ATTEST:

James E. Aldridge
City Clerk

RC/gg
c:/rma.ord

The Public Tree Care Ordinance

Explanation of Each Section

The following is for use with the draft Public Tree Care Ordinance (June 16, 1994 draft). It details background information that may be useful in understanding each section.

INTRODUCTION: The Urban Forestry Board was established by City Council in 1989 to advise them on tree related issues in our community (see appendix page 1). At its meeting on November 19, 1992, the Urban Forestry Board resolved that pruning on public trees should be done to standards that would protect public trees. They sent this recommendation on to City Council (appendix page 2). The Mayor replied that more information was needed (appendix page 3). As a result of this and the recommendations of the City Auditor, the City Legal Department, and various resolutions from Council including the Austin ReLeaf Resolution, the Planting For the Future Resolution, and the Trees As Infrastructure Resolution, and numerous petitions on various issues from the public, the Urban Forestry Board began the process of drafting a Public Tree Care Ordinance. This process was begun in early 1993 and this document is now out for public review. This explanation and the attached appendix is provided to explain where the draft ordinance has come from and its intent.

Any questions on this draft should be directed to Mr. Patrick Wentworth, Chair of the Urban Forestry Board at 474-6614.

Section 15-9-1. Short Title

The City has authority over its rights-of-way and other public property in its Charter (City Charter Article 1 Sect. 4) (appendix page 11). This authority is granted by the State.

Section 15-9-2. Purpose and Intent

In addition to the intent stated in the ordinance, the intent of this ordinance is also to:

- Establish the authority for duties for which the PARD Forestry Program is already responsible.

- Incorporate several recent City Council and Urban Forestry Board resolutions concerning the urban forest (appendix pages 8, 9, 10).
- Address the January 1993 Audit Report on the Parks and Recreation Department by the Office of the City Auditor that recommended changes in the City Code concerning public tree care (appendix page 4).
- Implement the City Legal Departments recommendation that the city enact a Comprehensive Tree Ordinance (appendix page 5).
- Implement a permit system that is less expensive and time-consuming for citizens than the current system of license agreements and/or construction permits for tree work in the right-of-way as recommended by the Real Estate Division of the Public Works Department (appendix pages 32 and 37).
- Base this ordinance on the International Society of Arboriculture's, Standard Municipal Tree Ordinance and actual city ordinances including Fort Worth and Portland (appendix pages 13, 21, 23).

Section 15-9-3. Definitions

- A. The City has an Urban Forester on Staff in the Parks and Recreation Department. The position is already established in the Code in the Diseased Tree Ordinance (appendix page 29).
- B. The City owns and controls the right-of-way including the area between the curb and the property line (appendix page 11).
- C. This ordinance deals mostly with street and park trees.
- E. Trees under 3" are not covered by this ordinance unless they were planted by or for the City.

Section 15-9-4. Duties and Authority of City Forester

- A. The Urban Forester already is responsible for public tree care in Austin. Authority, however is somewhat unclear (appendix page 5). The Urban Forester is responsible for enforcing the Diseased Tree Ordinance (appendix page 29).
- B. The Arboricultural Specifications and Standards of Practice will be developed by a sub-committee of the Urban Forestry Board. These will be based on the International Society of Arboriculture's, Model Arboricultural Specifications and Standards of Practice.
- C. Already the current practice.
- E. Already the current practice.
- F. See Section 5
- G. See Section 5
- H. This allows the City Forester to assist the Board with its duty to "develop and establish a Comprehensive Urban Forest Plan" as they are charged to do in the Forestry Board Ordinance (appendix page 1).
- I. This allows a mechanism to put the Plan into effect.

J. Already the current practice.

K. Already the current practice.

Section 15-9-5. Permits

- A. 1. Permits give the city the express authority to manage its property. Currently, the area of the Code that covers all work done in the right-of-way is Chapter 13, Article IV: Driveways and Sidewalks (Appendix page 32). According to this Article, no person can work in the right-of-way without an annual license, bonding and permit from the Public Works and Transportation Department. The proposed tree permits will be much less restrictive and will not include licensing or bonding.

A permit system has been suggested by the City Legal Department as a less intensive way than license agreements to regulate homeowner activity in the right-of-way (appendix pages 5 and 37).

- A. 2. An example of a sample permit is attached (appendix page 12).

- B. In this case, if any work is done to plant, prune or remove a tree, the city will have a chance up front to ensure that it is done to the correct standards so that the tree will not pose any current or future hazards to persons or property.

City Council has encouraged right-of-way planting in their October 1989 resolution accepting the goal of planting 1,000,000 trees in the city with 300,000 of these to be planted on public property (appendix page 8). A permit system can make it easier to achieve this goal.

A permitting process will make it much easier for property owners to plant trees on public land and will put them in contact with the City Forester instead of the Real Estate Division of Public Works and Transportation who currently issue license agreements to do work in the right-of-way (appendix page 37). The Real Estate Division supports this permit process to streamline tree planting along roadways.

During the permit application process, the forester can educate the citizen as to the best way to do the tree work so that if work is done it will not create a hazardous situation for the general public or endanger the health of the tree that may make the City liable.

- B. This will help ensure that, for example, tall trees are not planted under power lines or if something is planted that blocks a traffic sign or a sight line at a corner it can be removed.
- C. 1. This is so that the City will not have to permit itself but its tree activities will still be under the review of the Urban Forestry Board.
- C. 2. This is for commercial tree maintenance companies so that they do not have to reapply for a permit for each pruning job that they do. Since tree removal involves a taking of public property, a permit is required for each removal. The City removes will continue to remove hazardous and/or dead trees in the right-of-way at no charge to the adjacent property owner.

- D. This allows for the person who removes the tree(s) to mitigate the tree loss to the City by replanting. The Planting for the Future Trust In Agency Fund was established by resolution of the City Council on August 1991 at the request of the Urban Forestry Board (Page 9). This fund can only be used for public tree planting.
- E. This eliminates the need for permits during emergencies.
- F. Permits can be revoked if its conditions are not being met.

Section 15-9-6. Obstructions

- A. PARD is already providing this service under Section 16-7-43 of the Basic Traffic Ordinance (appendix page 40). The PARD audit in 1993 advised in Recommendation 17 that the role of the City in pruning private trees needed to be clarified (appendix page 4). This section attempts to do that. The ability to charge for this work is a new authority and will only be done when the adjacent owner will not take the responsibility for the care of the limbs originating on their property that overhang the right-of-way.
- B. This is what PARD is already doing under Section 16-7-40. Since this vegetation is on public property, there is no charge for this service.
- C. 1. PARD is already performing this service under Section 16-7-41. Again, since the vegetation is on public property, there is no charge to remove it unless it is established after the passage of this ordinance; then it could be removed if a permit was not secured.
- C. 2. This is taken from and is unchanged from the existing City Code 16-7-42.

Section 15-9-7. Protection of Trees.

Currently, Raul Calderon with the City Legal Department is drafting language to amend the Land Development Code to resolve potential conflicts in authority with this section of the ordinance. These have been discussed with the City Arborist in ECSD and he concurs with these recommendations. Specifically, Mr. Calderon is looking at:

- 13-1-603 (F) Revise to include 3" on public land (Appendix page 48).
- 13-5-64 (E) Add review by Urban Forester if a public tree is involved (Appendix page 32).
- 13-5-68 Make the Urban Forester the authority for trees relocated or replaced on public property (Appendix page 32).
- 13-7-38 Change the definition of protected tree to only include trees on private property (Appendix page 44).

Section 15-9-10. Loss of Public Trees- Value Recovered

- A. This section covers trees not removed under permit and allows the city to collect for damages to public property. PARD already does this in cooperation with APD and the City Attorney's Office.

- B. The Planting For the Future Fund was established by City Council in 1991 as a trust fund for public tree planting (appendix page 9).

Section 15-9-11. Major Improvements

This section codifies and provides for the funding of City Council's resolution of February 1991 that stated Council's intention that construction of city streets and thoroughfares include trees (appendix page 10). Currently, Houston devotes 1% of all CIP to trees and landscaping and Milwaukee devotes 2% of its roadway construction funds to trees (appendix page 41 and 43). In addition, the Texas Department of Highways earmarks 1% of construction costs for trees and landscaping and have been doing this for seven years.

Section 15-9-13. Appeals

- A. If a permit is denied by the City Forester, that decision can be appealed to the Urban Forestry Board. This board is already a sovereign board from its ability to hear appeals on rulings on diseased trees that are ordered for removal on private property under the Diseased Tree Ordinance (appendix page 29).
- B. If someone is unhappy with the assessment made against them for their removal or destruction of a public tree they can appeal this decision to the Urban Forestry Board.

Section 15-9-14. Interference With City Forester.

This is a standard section in ordinances.

Section 15-9-15. Violation and Penalty.

This is set according to the City Code.

APPENDIX I

The Draft Public Tree Care Ordinance Attachments to the Explanation of Each Section

PAGE	ATTACHMENT
1	Forestry Board Ordinance (Section 2-4-455 to 2-4-458)
2	Letter from Urban Forestry Board to Council (November 19, 1992)
3	Letter from Mayor to Urban Forestry Board (Dec. 3, 1992)
4	PARD Audit Report- January 1993
5,7	City Legal Memo 24 September 1990
8	Austin Relaeaf Resolution (October 1989)
9	Planting For the Future Resolution (August 1991)
10	Austin Trees As Infrastructure Resolution (February 1991)
11	City Authority Over Right-of-Way Ordinance (Charter Art. 1-Sect. 4)
12	Sample Permit
13-20	Standard Municipal Tree Ordinance (ISA)
21-22	Fort Worth Tree Ordinance (Adopted in 1929)
23-28	Portland Tree Ordinance
29-31	Diseased Tree and Firewood Ordinance (Section 10-6-1 TO 10-6-8)
32-36	Work in the Right-of-Way Ordinance (13-5-60 - 13-5-75)
37-39	License Agreements for Tree Planting (13-1-950 - 13-1-952)
40	Vegetation Obstructions To Traffic Ordinance (16-7-40 to 16-7-45)
41-42	Houston Trees As Infrastructure Resolution (January 1990)
43	Milwaukee Trees As Infrastructure (1989)
44-47	Tree Protection Ordinance (13-7-37 to 13-7-47)
48-50	Site Plan Exemptions (13-1-603 and 13-1-604)

within the city may be coordinated to secure the greatest public welfare.

('81 Code, § 6-6-136) (Ord. 880609-L)

§ 2-4-448 STAFF SUPPORT.

Staff support shall be provided by the Solid Waste Services Division of the Environmental and Conservation Services Department. The availability of staff support is subject to the availability of funds and staff time and to an approved work plan and budget. In addition, staff support may be requested from time to time from other departments of the city.

('81 Code, § 6-6-137) (Ord. 880609-L)

*** ARTICLE XXIV. URBAN FORESTRY BOARD**

§ 2-4-458 CREATED.

There is hereby created an Urban Forestry Board.

('81 Code, § 9-12-10) (Ord. 880519-E)

Cross-reference:

Trees, see Chapter 10-6

§ 2-4-458 MEMBERS.

(A) The Urban Forestry Board shall be composed of nine citizens of the city, who shall be appointed by the City Council. At least three members shall have expertise in arboriculture, urban forestry or landscape architecture. The remaining six members, in so far as possible, shall represent diverse regions or interests of the community. Such members shall be appointed to two-year staggered terms with two of the three members with arboriculture, urban forestry, or landscape architecture expertise and three of the other members' terms expiring June 1 of odd-numbered years. Any vacancy shall be filled for the unexpired term. All members shall serve without pay.

(B) The Urban Forester, City Arborist, the Director of Parks and Recreation, the Director of Environmental Protection, and the Director of Public Works and Transportation shall serve as ex officio members of the Board.

('81 Code, § 9-12-11) (Ord. 880519-E)

§ 2-4-457 ORGANIZATION AND MEETINGS.

The Urban Forestry Board shall meet for organization immediately after appointment of its members. The Board shall adopt such rules and regulations as it deems best to govern its actions, subject to the general laws of the state, this code, and any other ordinances of the city and other actions of the City Council.

('81 Code, § 9-12-12) (Ord. 880519-E)

§ 2-4-458 FUNCTIONS GENERALLY.

(A) The Urban Forestry Board shall act in an advisory capacity to the City Council, the City Manager and the Director of Parks and Recreation in all matters pertaining to the city's urban forest. The Board is authorized to study, investigate, plan, advise, report and recommend any action, program, plan or legislation which the Board finds or determines necessary or advisable for the care, preservation, pruning, planting, replanting, removal or disposition of trees and shrubs and other landscaping in public parks, along streets, and in other public areas.

(B) The Urban Forestry Board shall develop and establish a comprehensive urban forest plan for the planting, maintenance and replacement of trees in parks, along streets and in other public areas. When a portion of such plan has been developed and established, it shall be submitted to the City Council for adoption prior to implementation.

(C) The Urban Forestry Board may be assigned or requested to perform other functions within the scope of its work by the City Council, the City Manager, or the Director of Parks and Recreation.

('81 Code, § 9-12-13) (Ord. 880519-E)

ARTICLE XXIV. URBAN RENEWAL AGENCY

§ 2-4-468 ESTABLISHMENT.

Members of the Community Development Commission which are appointed by the Mayor shall constitute and compose the membership of the Board of Commissioners of the Urban Renewal Agency, doing business as the Austin Redevelopment Authority, which shall retain the authority granted to it under Tex. Local Government Code Ann. Chapter 374 (Vernon 1988)

Urban Forestry Board
3001 South Congress
Austin, Texas 78704
November 19, 1992

Mayor Bruce Todd and
Members of the City Council
P.O. Box 1088
Austin, Texas 78767

Dear Mr. Mayor and Council Members:

At its meeting on November 12, the Urban Forestry Board unanimously approved a motion recommending that the City of Austin require by ordinance that any entity, public or private, pruning City trees for any reason be required to follow the guidelines adopted by the Electric Utility Department in its 1992-1995 line clearance contract.

The guidelines adopted by the Department are good and workable. Applying them to all City trees would introduce a tree care standard that would assure the City of minimum damage to trees from pruning.

Sincerely,

Brother Daniel Lynch, Chair
Urban Forestry Board



City of Austin

FOUNDED BY CONGRESS REPUBLIC OF TEXAS 1839

P.O. BOX 1068

AUSTIN, TEXAS 78766

AC 512 499 2250

FAX 512 499 2337

RUCE TODD
MAYOROFFICE OF THE MAYOR
December 3, 1992Urban Forestry Board
Brother Daniel Lynch
3001 S. Congress
Austin, Texas 78704

Dear Board Members:

As you are aware, all agenda items appearing on City Council agendas have back-up material that gives information on the item. The preparation of material is a constant, on-going process the week preceding the agenda date, with the printing and distribution of the material occurring on the Friday prior to the City Council meeting on Thursday. All items appearing on the agenda must have complete back-up in order to be placed on the agenda.

Since Board and Commission reports are parts of the City Council agenda, I am asking for your assistance in the processing of these reports. For placement on a particular agenda, an executive summary should be submitted to my office which highlights points to be addressed in the presentation. The summary ideally should be from one to two pages in length. I am requesting a summary from you so that it may be included in the back-up package that is printed in conjunction with the agenda. This will allow citizens and the Council to become familiar with your item prior to the meeting and facilitate a more productive discussion.

For placement of a Board/Commission report on a Council agenda, please contact my assistant, Kristin Kessler at 499-2250. She will assist you in securing a date for your item to appear on the Council agenda. Your back-up material needs to be turned in to Kristin eight working days before the date of your presentation to Council at the latest (two Mondays prior to the Council meeting that you will be presenting your report); turning the report in earlier is encouraged. The due date of eight working days before the date of presentation is consistent with the date that all other agenda back-up is due. This allows for a thorough review, and if necessary, revision of back-up prior to printing.

I appreciate your assistance on this matter. It will make for a more productive presentation and allow for better dialogue at the Council meeting. I have attached a report that you might want to use as a reference when preparing your report.

Sincerely,

Audit Report

**PARKS AND RECREATION DEPARTMENT
AUDIT**

January 1993

Office of the City Auditor
Austin, Texas

-
17. The Parks and Recreation Department Director should evaluate the workload and customer-relations impact of enforcing Code requirements for tree trimming by property owners.

MANAGEMENT RESPONSE: CONCUR

The City of Austin Ordinance currently states that the property owner is responsible for maintaining a height clearance of fourteen feet above the curblane for trees on their property. Currently the PARD Urban Forestry Unit maintains those limbs and dead wood not in the power lines, that are below the fourteen foot level. The Ordinance is not currently being enforced as written. Lack of resources in personnel and equipment preclude enforcement by PARD on the approximately 60,000 street trees in the COA.

PARD's Urban Forestry Unit will work with the Urban Forestry Board to enhance the current ordinance by taking before the City Council amendments which will make for a Comprehensive Tree Ordinance. This revised ordinance will state the COA has the authority to maintain the tree height clearance, but that the property owner has the responsibility. The process will include evaluating the impact on the property owner as well as the COA's ability to enforce such an Ordinance. Currently, the provision for trimming low limbs is included in Chapter 16-7 of the City Code, titled Obstructions to Traffic. The proposed ordinance would clarify roles of both the COA and the property owner.



M E M O R A N D U M
C O N F I D E N T I A L

TO: John Giedraitis, Parks and Recreation Department
FROM: Rhonda Weaver, Assistant City Attorney
DATE: September 24, 1990
SUBJECT: Maintenance of Trees in Right-of-Way

FACTS

I prepared a memorandum from Iris J. Jones, Acting City Attorney, to Elaine Hart, CPA, Director, dated January 22, 1990, regarding the maintenance of trees in public right-of-way. The purpose of this memorandum is to clarify that earlier opinion.

ISSUE

Does the Austin City Code of 1981 (the "Code") require that property owners maintain trees planted in the right-of-way adjacent to their property?

SHORT ANSWER

The present Code provisions require that property owners maintain trees growing from their property or the curblane adjacent to their property only to the extent that the sidewalk remain free from obstructions.

DISCUSSION

Sec. 11-2-178 of the Code prohibits property owners from allowing trees, shrubs, or other vegetative matter to obstruct the public's use of the sidewalk. The section addresses (1) vegetation growing from the area between the owner's property line and the curblane of the street and (2) vegetation growing onto the sidewalk from private property.

Sec. 11-2-180 of the Code requires that property owners maintain trees growing from their property in a manner which will allow a clearance of fourteen (14) feet at the curbline, and requires the property owners to trim such trees accordingly.

Sec. 11-2-182 of the Code expressly authorizes the City Manager to remove foliage between the opposite curbline of city streets to maintain a minimum clearance of fourteen (14) feet above the street.

To summarize, the Code does not require property owners to do anything more than merely keep the sidewalk clear; the Code does not require property owners to maintain trees or other vegetation in a manner which will prevent obstructions to the street or to vehicular traffic.

However, the City has a duty to exercise ordinary care in maintaining the public right-of-way. This includes an obligation to keep streets in a reasonably safe condition. The City is aware of property owners who have planted bushes and other vegetation along the curbline of their property which, although not an obstruction to the sidewalk, does present a hazard to vehicular traffic. The plants obstruct vision around corners or present problems for cars pulling out of adjacent driveways. The City is under an affirmative duty to correct these situations, even where the property owner holds fee simple title to the property subject to the City's right-of-way. However, the current ordinances do not provide the staff with sufficient authority to secure cooperation or compliance from the property owners.

Therefore, it would be extremely beneficial for the City to enact a comprehensive tree ordinance. This ordinance could expand the current City Code provisions to expressly provide that adjacent property owners be responsible for maintaining and, when necessary, removing trees and other vegetation planted in the right-of-way. It would also be helpful to include guidelines and permitting procedures for property owners who wish to plant new trees in the right-of-way.

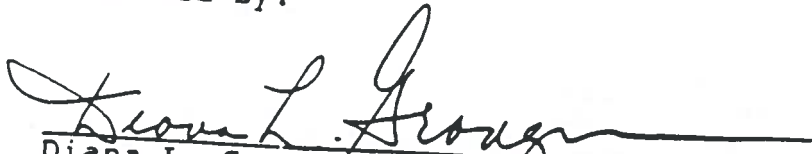
In order to resolve these issues, I recommend that a group of employees from affected City departments and commissions form a task force to study these problems and draft a more comprehensive City ordinance. I would be more than happy to participate in such an effort.

Prepared by:


Rhonda Weaver, Assistant City Attorney

Memorandum to John Giedraitis
September 24, 1990
Page 3

Reviewed by:


Diana L. Granger, Deputy City Attorney

Approved by:


Iris J. Jones, City Attorney

RW:rw
1057

RESOLUTION

WHEREAS, trees serve as a vital resource in urban environments and as an important psychological link with nature for our citizens; and,

WHEREAS, trees are a valuable economic asset to our city, helping to maintain and increase property values and attracting businesses and new residents to our community; and,

WHEREAS, trees play an important part in energy conservation by modifying temperature extremes, humidity and winds and play a particularly important role in reducing the amount of energy consumed in heating and cooling buildings and homes; and,

WHEREAS, trees directly reduce air pollution by removing airborne particulates from the atmosphere to help purify the air; and,

WHEREAS, trees are one of the best weapons our world has in preventing global warming; and,

WHEREAS, trees also help reduce noise, provide a habitat for songbirds and other wildlife, reduce surface runoff, protect urban water resources, and enhance the aesthetic quality of life in Austin; Now, Therefore,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the Austin City Council recognizes the importance of trees and encourages and supports the efforts of establishing and maintaining Austin's urban forest by accepting the goal of planting and caring for one million new trees in Austin, Texas, by the year 2000; and,

BE IT FURTHER RESOLVED:

That the City accepts the goal of planting 100,000 of those one million trees on public lands, including City of Austin park land and rights-of-way, by the year 2000.

ADOPTED: October 12, 1989 ATTEST: James E. Aldridge
James E. Aldridge
City Clerk

RESOLUTION

WHEREAS, the City of Austin has set a goal of planting one million trees by the year 2000 through a public and private partnership; and

WHEREAS, to help achieve this goal, the City of Austin adopted the utility bill check-off for tree planting donations; and

WHEREAS, the "Planting for the Future" fund was established for the ratepayers' contributions for the specific community goal of planting one million trees; NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That "Planting for the Future" funds will be used for the purposes of tree planting, tree materials, tree education, and tree preservation, the primary purpose being the purchase of trees; and

BE IT FURTHER RESOLVED that the fund is in no way a replacement for the funding of urban forestry in the General Fund.

ADOPTED: August 1 1991

ATTEST: James E. Aldridge
James E. Aldridge
City Clerk

01AUG91
MIC:lw

56

RESOLUTION

WHEREAS, it is the intention of the City of Austin that construction of City streets and thoroughfares include trees; and

WHEREAS, trees are an integral part of the City street and thoroughfare system; and

WHEREAS, it is the intention of the City of Austin to include trees in the design and construction of City streets and thoroughfares; NOW THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

That the City Manager be directed to allow for trees in future roadway projects.

ADOPTED: _____, 1991

ATTEST: _____

James E. Aldridge
City Clerk

28FEB91
RC:lw

granting and enumerating the same herein.

Statutory reference:

Powers of home rule cities generally, see Tex. Local Government Code Ann. § 51.071 et seq. (Vernon 1988); see also Tex. Rev. Civ. Stat. Ann. art. 1175

§ 4. STREETS AND PUBLIC PROPERTY. ✱

The city shall have exclusive dominion, control, and jurisdiction, in, upon, over, and under the public streets, sidewalks, alleys, highways, public squares, and public ways within the corporate limits of the city, and in, upon, over, and under all public property of the city. With respect to each and every public street, sidewalk, alley, highway, public square, or other public way within the corporate limits of the city, the city shall have the power to establish, maintain, alter, abandon, or vacate the same; to regulate, establish, or change the grade thereof; to control and regulate the use thereof; and to abate and remove in a summary manner any encroachment thereon.

Annotation:

Changing the name of a street is a legislative act for which an ordinance is required, City of Austin v. Findlay, 538 S.W.2d 9 (Ct. Civ. app. 1976). The city has authority under Art. XVIII, § 2 of 1909 Charter (substantially similar to above section) to regulate jitneys, Ex parte Boyle, 179 S.W. 1193 (Ct. Civ. App. 1915). The city is authorized to regulate, control and remove encroachments or obstructions on streets, Joseph v. City of Austin, 101 S.W. 2d 381 (Ct. Civ. App. 1936)

Statutory reference:

General power of city over streets, see Tex. Local Government Code ann. § 251.001 (Vernon 1988); see also Tex. Rev. Civ. Stat. Ann. art. 1175 (2) - (3)

§ 5. STREET DEVELOPMENT AND IMPROVEMENT.

The city shall have the power to develop and improve, or cause to be developed and improved, any and all public streets, sidewalks, alleys, highways, and other public ways within the corporate limits of the city by laying out, opening, narrowing, widening, straightening, extending and establishing building lines along the same; by purchasing, condemning, and taking property therefor, by filling, grading, raising, lowering, paving, repaving and repairing, in a permanent manner the same and by constructing,

reconstructing, altering, repairing, and realigning curbs, gutters, drains, sidewalks, culverts, and other appurtenances and incidentals in connection with such development and improvements. The city may make or cause to be made any one or more of the kinds or classes of development and improvement authorized hereinabove, or any combination or parts thereof. The cost of such development and improvement shall be paid by the city, or partly by the city and partly by assessments levied against the property abutting thereon and the owners thereof, and such assessments may be levied in any amounts and under any procedure now or hereafter permitted by state law.

If improvements be ordered constructed in any part of the area between and under rails, tracks, double-tracks, turnouts and switches, and two (2) feet on each side thereof, of any railway, using, occupying, or crossing any such highway, portion or portions thereof, ordered improved, then the city council shall have power to assess the whole cost of improvements in such area against such railway, and shall have power, by ordinance, to levy a special tax upon such railway, and its road-bed, ties, rails, fixtures, rights and franchises, which tax shall constitute a lien thereon superior to any other lien or claim except state, county, and city ad valorem taxes, and which may be enforced either by sale of said property in the manner provided by law for the collection of ad valorem taxes by the city, or by suit in any court having jurisdiction. The ordinance levying such tax shall prescribe the time, terms and conditions of payment thereof, and the rate of interest, not to exceed eight percent (8%) per annum, and same, if not paid when due, shall be collectible, together with interest, to expenses of collection and reasonable attorney's fees, if incurred. The city council shall have power to cause to be issued assignable certificates in evidence of any such assessments.

As an alternate and cumulative method of developing, improving, and paving any and all public streets, sidewalks, alleys, highways, and other public ways within the corporate limits, the city shall have the power and authority to proceed in accordance with Chapter 106, page 489, Acts 1927, Fortieth Legislature, First Called Session, as now or hereafter amended [Tex. Rev. Civ. Stat. Ann. art. 1105b]; to adopt plans and specifications pursuant thereto; to pay to the contractor, the successful bidder, in cash, that part of the cost which may be assessed against the abutting property and the owners thereof, to reimburse itself for the amount paid such contractor in levying assessments against the abutting property.

Draft for Review By the Urban Forestry Board

Permit ppt

<u>TREE PLANTING, MAINTENANCE, AND REMOVAL PERMIT</u> <u>(NO CHARGE)</u>		
Name of Applicant:	_____ Phone: _____	
Address of Applicant:	_____	
Location of Work:	_____	
Request To: Remove:	Plant: _____	Other: _____
In accordance with the Austin Tree Care Ordinance, I request permission to remove, plant or prune trees on public property.		
SPECIES:	NO.	SIZE OF PLANT(S):
Approved with the following conditions: _____		

In consideration of the granting of this permit, all work must be done in accordance with the provisions of the Public Tree Care Ordinance, Chapter 15 of the Austin City Code and the City of Austin Arboricultural Specifications and Standards of Practice. This permit is granted upon the express condition that the Permittee agrees to indemnify and hold harmless the City of Austin and the public in connection with the work done under this permit.		
This permit is valid from: _____ to: _____.		
Approved (Urban Forester)	Date	Applicant Date
Austin Parks and Recreation Department-Forestry and Horticulture Program-600 River Street-476-6485		

3/30/94

MUNICIPAL TREE MANUAL

Compiled by

Philip J. Hoefer
Colorado State Forest Service
Fort Collins, Colorado

Dr. E. B. Himelick
Illinois Natural History Survey
Champaign, Illinois

and

David F. DeVoto
Director of Forestry
Minneapolis, Minnesota

Prepared and Recommended by the
MUNICIPAL ARBORISTS AND URBAN FORESTERS SOCIETY

a special interest group
of the

INTERNATIONAL SOCIETY OF ARBORICULTURE

P.O. Box 908, Urbana, Illinois 61801

PART I - INTRODUCTION

PURPOSE

A municipal ordinance developed to control the planting and care of trees is a critical tool for improving and maintaining the health of a city landscape or forest and enhancing the general health and welfare of its citizens. The purpose of this document is to be a guide for preparing new, or revising old, municipal tree ordinances.

Numerous articles and publications can be found on tree ordinances and their development (Appendix A). Each serves a purpose to better evaluate considerations for developing an ordinance. Local conditions and legal arrangements vary, so it is impossible to create a sample ordinance to be copied directly. The sections and samples of ordinances provided in this guide illustrate typical solutions of problems raised. Should any question arise as to the legality of a particular provision, legal counsel should be retained.

It is the hope of the Municipal Arborist and Urban Foresters Society (MAUFS), a special interest group of the International Society of Arboriculture, that this revised Municipal Tree Ordinance Manual will meet the needs of municipalities, tree commissions, concerned citizens, and other interested groups.

Format

Five parts were developed to assist in ordinance preparation. Part I, Introduction, reviews thoughts concerning ordinances and ideas on what process to follow. Part II, Ordinance Sections, lists and briefly describes various sections which can be included in an ordinance. Part III, Sample Ordinances, shows examples of ordinance styles. Part IV, Standards and Specifications, gives examples of arboricultural subjects that need to be covered in more detail but need not necessarily be an integral part of an ordinance. Part V, Guide for Municipal Forestry Contract Specifications, provides general contract information for bidders and specific work recommendations.

The Process

Whenever an ordinance review is planned, we strongly recommend an investigation or inventory of ordinances, codes and other rules and regulations that affect the planting and maintenance of plant materials in the city. These should be carefully examined for any conflicting actions or lack of planning for tree planting. One will likely find information referring to trees in ordinances and codes affecting landscaping, development, planning and zoning, and utilities. Each should be cross-referenced when rewriting or developing a new tree

ordinance. Ordinances that affect commercial and housing developments have a tremendous impact on future tree cover and tree care.

During the ordinance creation or review process we strongly recommended close coordination with the city's legal counsel. Sections of our sample ordinances may not be legal in some communities, e.g. responsibility for trees on private property. It is also helpful to understand the liabilities the city assumes or clarifies by having a tree ordinance.

For the purpose of this manual, the terms City Arborist or City Forester were selected as the key position. Each municipality can select a term that best adapts to the local political situation. Utility Forester, Forestry Warden, Tree Commission, Tree/Forestry Board are examples of alternate titles.

PART II - ORDINANCE SECTIONS

Part II identifies various sections of a tree ordinance. Tree ordinances need not have ALL these sections. Choices are available to best fit the municipality's situation.

Cross-referencing a section with other sections in the ordinance or other ordinances is routine. Usually the reference is made at the end of the paragraph(s) defining the section. An example is: "...other public place (Chapter III-5)." This process was not shown in this manual.

Purpose: A statement usually capitalized and in bold print to identify the reason for the ordinance.

Home Rule Authority: In order to avoid conflicts with state laws governing trees, a statement transferring regulations to the city may be necessary. State, county and city laws will explain this process or the need for this section.

Authority and Power: Defines, designates, or creates a department, board, commission, or person responsible for the planting, care, and protection of a city's trees. Some municipalities include the rights to promulgate and enforce rules, regulations, standards and specifications concerning the various aspects of tree planting and care within the city. This statement then allows a separate document to be developed that gets into specifics about arboricultural techniques. Often another section, i.e. TREE BOARD, is used to create the department, board, commission or position while this authority section allows for the promulgation of rules.

Term of Office: A section used with volunteer boards or commissions to define length of service, and for filling vacancies. Staggering terms of individuals assures some continuity and stability.

Applicability: Identifies the scope and jurisdiction of the ordinance. A tree ordinance usually covers all trees located in rights-of-way, public parks, cemeteries, and other public grounds, and private

of the tree, its location or hazard. Some municipalities are passing jurisdiction over private trees as well.

Definitions: Clarifies unusual words and terms. Ordinances vary dramatically in detail. If arboricultural rules, regulations or specifications accompany the ordinance, many arboricultural terms can be minimized in this section. Examples of some words are: arborist, contractor, arboriculture, city forester or arborist, public tree, private tree, tree, tree lawn, parkway, right-of-way, easement, and so on. Be selective in the listing of technical words.

Licensing: Provides the authority to issue a license to arborists for tree work on public and private property. Included here can be the fees, frequency of renewal, testing procedures, types of licenses available, license suspension and appeals, identification of equipment, surety bonds, and so forth. Some ordinances have this section divided into subsections. It is recommended that the license be more than a registration. Testing (quality control) is time consuming but valuable.

Insurance: Regulating the kind and amount of insurance an arborist carries is described here. Some municipalities use their state's minimum liability coverage as a guide. Since arborists are often working above and around valuable property, do not overlook this section.

Landscaping: Landscaping may be handled in a separate municipal code or ordinance. Check the local building, planning, zoning, or similar sections of the municipal codes. This section should provide for adequate protection of existing trees and define the process for landscape plans reviewed and approved by the city forester. It is best not to issue a building permit unless approved by the city forester or reviewed by a tree board.

Enforcement: It is necessary to give the city forester or other municipal designer the right to issue notices of violations, notices to perform work, stop work, and similar enforcement authority. A section defining that process can be separately identified such as this one.

Adjacent Landowner Responsibility: Private property owners whose land abuts public right-of-way often want to care for trees on that right-of-way. This section can describe a process by which the homeowner obtains a permit to do work on such trees.

Tree Planting, Maintenance and Removal: Ordinances that do not identify separate Arboriculture Standards and Specifications, or Guidelines should include information about planting, maintenance, and removals. In many cases, several sections are created to handle this information. Details such as desirable or undesirable tree species, minimum sizes, spacing, pruning techniques, hazards, sight triangles,

and hazards of removal are included here. It is best to write separate Arboriculture Standards and Specifications which have been addressed and readily available (See Part IV). These specifications should be reviewed at least at every five years. Permit requirements need to be identified here. No private landowner should have the right to work on abutting public trees without first obtaining a permit from the city (Appendix B).

Tree Protection: Protecting existing trees on public and private property is important. It is possible that this subject is covered under another municipal code or ordinance. If not, prepare some description here which requires a permit to do any work on public trees. Some municipalities go so far as to require a permit for private trees as well, especially in removal cases. A statement indicating that it is unlawful to hang signs, use nails and other such items that can damage a tree also should be included.

Private Trees: Private trees have the potential to be a public nuisance. Some statement is needed to allow inspection of private vegetation and authority to designate a public nuisance.

Permits: Indicate here the need for permits to plant, maintain or remove public trees. Describe the procedures to obtain a permit and associate costs. Make certain the property owner is knowledgeable, capable of doing specific jobs and liable for follow-up inspections. Private contractors should be required to have a license. Any work contracted by a private party for trees on public property should secure a permit from the city forester (Appendix B). Franchise agreements with regulated electric utility companies usually describe the obligation of the utility to trim municipally owned trees growing near power lines, negating the need for a permit. Rather, utilities should notify the municipality prior to trimming municipal trees and should abide by recognized industry standards.

Appeal Rights: Define a process for appealing notices given by the city forester in this section. Include time periods, how the appeal is to be submitted, and who will be on the appeal board. Often, there is a standard format for appeals in the city. Use that standard but change the wording to conform to language in the tree ordinance.

Penalty for Violation: What happens when someone does not adhere to this ordinance is stated here. A standard city clause is normally adequate, however, with the ability to determine tree values, a statement to include appraised tree value as the fine is recommended. Tree values must be determined by qualified appraisers.

Severability: Another standard city clause can be inserted here which states that any section of the ordinance which is found to be invalid or

the ordinance by a competent jurisdiction does not affect the validity of the remaining sections.

Financing: A few municipalities may need to include a section on how the forestry program is financed (general funds, special assessments, utility tax, or other innovative means).

Assessment of Claim: If notice was given to a property owner to accomplish a task and the work was not completed in the time frame outlined, the city can do the work and assess a claim against the property through tax notice or other process created by the municipality.

Right to Enter Private Property: The city forester or designer should be given the right to enter private property in order to conduct the provisions stated in an ordinance.

PART III - SAMPLE ORDINANCES

Three sample ordinances are included in this Ordinance Manual. Little or no modification of wording occurred. They provide enough information to help create an acceptable ordinance for your municipality. Not all the sections listed in Part II are included in these samples.

The "Standard Ordinance" was prepared by Dr. E. B. Himelick and published by the International Society of Arboriculture in 1972.

The "Brief Ordinance" was prepared by the extension foresters of Kansas State University and is distributed through their Fact Sheet system. An even more brief ordinance can be prepared if specifics are placed in an attached Arboricultural Standards and Specifications section.

The "Comprehensive Ordinance" is modeled after one used in Urbana, Illinois. Other samples can be found in the Tree City USA applications file in your state forester's office. With the assistance of the municipality's legal counsel, these samples along with the sections listed in Part II should make it convenient for you to prepare a meaningful ordinance protecting your city's trees and citizens.

IMPORTANT NOTICE

These ordinances are placed in this manual as examples. Plant materials, tree sizes, and other similar descriptions of plants are not standard for all locations. It is necessary for each community or locality to form its own lists. Consult as many knowledgeable arborists, foresters, and horticulturists as necessary to generate an ordinance that is acceptable to your conditions. Dollar figures used for license fees, insurance coverage, bonding, and penalties need to be adjusted to meet your community's requirements.

STANDARD MUNICIPAL ORDINANCE
Adopted by the Board of Trustees and published by the
City of _____

REGULATING THE PLANTING, MAINTENANCE,
AND REMOVAL OF SHADE AND ORNAMENTAL
TREES ON PUBLIC AREAS IN THE
CITY OF _____
COUNTY OF _____
STATE OF _____
ORDINANCE NO. _____

AN ORDINANCE REGULATING THE
PLANTING, MAINTENANCE, AND REMOVAL
OF TREES IN THE PUBLIC STREETS, PARKWAYS,
AND OTHER MUNICIPAL-OWNED PROPERTY;
ESTABLISHING A SHADE TREE COMMISSION
AND ESTABLISHING THE OFFICE OF A
MUNICIPAL ARBORIST AS THE AGENCIES
PRESCRIBING REGULATIONS RELATING TO THE
PLANTING, MAINTENANCE, AND REMOVAL
OF TREES IN PUBLIC PLACES; PROVIDING FOR
THE ISSUING OF PERMITS FOR THE PLANTING,
MAINTENANCE, AND REMOVAL OF TREES IN
PUBLIC PLACES; PROVIDING FOR THE PRUNING
AND REMOVAL OF TREES ON PRIVATE
PROPERTY WHICH ENDANGER PUBLIC SAFETY;
AND PRESCRIBING PENALTIES FOR
VIOLATIONS OF ITS PROVISIONS.
BE IT ORDAINED BY THE COUNCIL OF THE
MUNICIPALITY OF _____
COUNTY OF _____ STATE OF _____

Section 1. Short Title.

This Ordinance shall be known and may be cited as
the Municipal Tree Ordinance of the Municipality of _____
County of _____ State of _____

Section 2. Definitions.

For the purpose of this Ordinance the following
terms, phrases, words, and their derivations shall
have the meaning given herein. When not
inconsistent with the context, words used in the
present tense include the future, words in the plural
include singular, and words in the singular include
the plural. The word Shall is mandatory and not
merely directory.

Municipality is the City, Town, Village, Subdivision,
or otherwise designated area unit of _____
County of _____ State of _____

Park and Street Trees Department is the department
of "Parks and Street Trees", "Parks and Forestry",
"Forestry", "Street Trees", or other designated
department of the municipality under whose
jurisdiction park and/or street trees fall.

Municipal Arborist is the Municipal Arborist,
Forester, Tree Warden, or other qualified designated
official of the Municipality of _____
County of _____

State of _____ assigned to carry out
the enforcement of this Ordinance

Person is any person, firm, partnership, association,
corporation, company, or organization of any kind.
Street or Highway means the entire width of every
public way or right-of-way when any part thereof is
open to the use of the public, as a matter of right, for
purposes of vehicular and pedestrian traffic.

Park shall include all public parks having individual
names.

Public Places shall include all other grounds owned
by the Municipality of _____
County of _____ State of _____

Property Line shall mean the outer edge of a street or
highway.

Treelawn is that part of a street or highway, not
covered by sidewalk or other paving, lying between
the property line and that portion of the street or
highway usually used for vehicular traffic.

Public Trees shall include all shade and ornamental
trees now or hereafter growing on any street or any
public areas where otherwise indicated.

Large Trees are designated as those attaining a height
of forty-five (45) feet or more.

Medium Trees are designated as those attaining a
height of thirty (30) to forty-five (45) feet.

Small Trees are designated as those attaining a
height of twenty (20) to thirty (30) feet.

Principal Thoroughfare shall mean any street upon
which trucks are not prohibited.

Property Owner shall mean the person owning such
property as shown by the County Auditor's Plat of
_____ County, State of _____

Section 3. Establishment of a Shade Tree Commission.

A. There shall be created a commission to be
known and designated as "Shade Tree Commission"
composed of nine (9) citizens of the Municipality of _____
County of _____, a majority of whom shall be
residents of the Municipality of _____
County of _____ Six (6) of said
members shall be appointed by the Mayor with
approval of the Council. The seventh (7th) member
shall be the Director of Public Service who shall be
an ex-officio member, the eighth (8th) member shall
be the Superintendent of the Department of Parks
and Street Trees who shall be an ex-officio member,
and the ninth (9th) member shall be the Municipal
Arborist who shall be an ex-officio member. All
members of the Commission shall serve without
pay. The six (6) members appointed by the Mayor

... follows two (2) for two (2) years, two (2) for two (2) years, and two (2) for four (4) years, and serve until their successors are duly appointed and approved by the Council. Successors of members appointed by the Mayor shall, thereafter be appointed for terms of four (4) years. Vacancies caused by death, resignation, or otherwise, shall be filled for the unexpired term in the same manner as original appointments are made.

B. The duties of said "Shade Tree Commission" shall be as follows:

To study the problems and determine the needs of the Municipality of _____, County of _____, State of _____

in connection with its tree planting program.

To recommend to the proper authority, the type and kind of trees to be planted upon such municipal streets or parts of municipal streets or in parks as is designated.

To assist the properly constituted officials of the Municipality of _____, County of _____, State of _____, as

well as the Council and citizens of the municipality, in the dissemination of news and information regarding the selection, planting, and maintenance of trees within the corporate limits, whether the same be on private or public property, and to make such recommendations from time to time to the Municipal Council as to desirable legislation concerning the tree program and activities for the municipality.

To provide regular and special meetings at which the subject of trees insofar as it relates to the municipality may be discussed by the members of the Commission, officers and personnel of the municipality and its several divisions, and all others interested in the tree program.

C. That within a reasonable time after the appointment of said Commission and the approval of the members thereof, upon call of the Mayor, said Commission shall meet and organize by the election of a chairman and the appointment of the Municipal Arborist as secretary. The said Commission shall then provide for the adoption of rules and procedures and for the holding of regular and special meetings as said Commission shall deem advisable and necessary in order to perform the duties set forth.

Section 4. Appointment and Qualifications of the Municipal Arborist.

The Municipal Arborist shall, where possible, be appointed from a Civil Service roster established by competitive examination after a personal interview, or where Civil Service does not exist, by a competitive examination and interview given by the Shade Tree Commission and/or the Park Board of the Municipality of _____, County of _____

State of _____
Upon satisfactory completion of a _____ probationary period he/she shall hold office as he/she satisfactorily performs the duties of the office. He/she shall be a person skilled and trained in the arts and sciences of municipal arboriculture and shall hold a college degree or its equivalent in arboriculture; amenity, ornamental or landscape horticulture; urban forestry; or other closely related field. In (state) _____ where there is a State Arborist or Certification Examining Board he/she shall have passed the state examination. He/she shall have had at least three (3) years experience in municipal shade tree work or its equivalent.

Section 5. Salary.

The Municipal Arborist shall receive a salary commensurate with his training and experience as full compensation for all services rendered and in lieu of all fees.

Section 6. Duties.

The Municipal Arborist shall have the authority to promulgate the rules and regulations of the Arboricultural Specifications and Standards of Practice governing the planting, maintenance, removal, fertilization, pruning, and bracing of trees on the streets or other public sites in the municipality, and shall direct, regulate, and control the planting, maintenance, and removal of all trees growing now or hereafter in any public area of the Municipality of _____, State of _____, County of _____

He/she shall cause the provision of this Ordinance to be enforced. In his absence these duties shall be the responsibility of a qualified alternate designated by the municipality.

Section 7. Authority of the Municipal Arborist.

A. The Municipal Arborist shall have the authority and jurisdiction of regulating the planting, maintenance, and removal of trees on streets and other publicly owned property to insure safety or preserve the aesthetics of such public sites.

B. Supervision. The Municipal Arborist shall have the authority and it shall be his duty to supervise or inspect all work done under a permit issued in accordance with the terms of this Ordinance.

C. Condition of Permit. The Municipal Arborist shall have the authority to affix reasonable conditions to the granting of a permit in accordance with the terms of this Ordinance.

D. Master Street Tree Plan. The Municipal Arborist shall have the authority to formulate a Master Street Tree Plan with the advice, a hearing, and approval of a Shade Tree Commission. The Master Street Tree Plan shall specify the species of tree to be

1. The number, kind, species or other public sites of municipality. From and after the effective date of the Master Street Tree Plan, or any amendment thereof, all planting shall conform thereto.

a. The Municipal Arborist shall consider all existing and future utility and environmental factors when recommending a specific species for each of the streets and other public sites of the municipality.

b. Amend. The Municipal Arborist, with the approval of the Shade Tree Commission, shall have the authority to amend or add to the Master Street Tree Plan at any time that circumstances make it advisable.

Section 8. Permits Required.

A. Planting, Maintenance and Removal

1. No person shall plant, spray, fertilize, preserve, prune, remove, cut above ground, or otherwise disturb any tree on any street or municipal-owned property without first filing an application and procuring a permit from the Municipal Arborist or otherwise specified municipal authority. The person receiving the permit shall abide by the Arboricultural Specifications and Standards of Practice adopted by the Municipal Arborist.

2. Application for permits must be made at the office of the Municipal Arborist not less than forty-eight (48) hours in advance of the time the work is to be done.

3. Standards of Issuance. The Municipal Arborist shall issue the permit provided for herein if, in his judgment, the proposed work is desirable and the proposed method and workmanship thereof are of a satisfactory nature. Any permit granted shall contain a definite date of expiration and the work shall be completed in the time allowed on the permit and in the manner as therein described. Any permit shall be void if its terms are violated.

4. Notice of completion shall be given within five (5) days to the Municipal Arborist for his inspection.

B. Planting

1. Application Data. The application required herein shall state the number of trees to be set out; the location, grade, species, cultivar or variety of each tree; the method of planting; and such other information as the Municipal Arborist shall find reasonably necessary to a fair determination of whether a permit should be issued.

2. Improper Planting. Whenever any tree shall be planted or set out in conflict with the provisions of this section, it shall be lawful for the Municipal Arborist to remove or cause removal of the same, and the exact cost thereof shall be assessed to the owner as provided by law in the case of assessments.

C. Maintenance

1. Application Data. The application required herein shall state the number and kinds of trees to

be removed, fertilized, pruned, or otherwise preserved; the kind of material to be administered; the composition of the spray material to be applied; and such other information as the Municipal Arborist shall find reasonably necessary to a fair determination of whether a permit should be issued.

D. Removal, Replanting, and Replacement

1. Wherever it is necessary to remove a tree or trees from a treelawn in connection with the paving of a sidewalk, or the paving or widening of the portion of a street or highway used for vehicular traffic, the municipality shall replant such trees or replace them. Provided that conditions prevent planting on treelawns, this requirement will be satisfied if any equivalent number of trees of the same size and species as provided for in the Arboricultural Specifications are planted in an attractive manner on the adjoining property.

2. No person or property owner shall remove a tree from the treelawn for the purpose of construction, or for any other reason, without first filing an application and procuring a permit from the Municipal Arborist, and without replacing the removed tree or trees in accordance with the adopted Arboricultural Specifications. Such replacement shall meet the standards of size, species, and placement as provided for in a permit issued by the Municipal Arborist. The person or property owner shall bear the cost of removal and replacement of all trees removed.

Section 9. Obstruction - Trees Pruned.

It shall be the duty of any person or persons owning or occupying real property bordering on any street upon which property there may be trees, to prune such trees in such manner that they will not obstruct or shade the street lights, obstruct the passage of pedestrians on sidewalks, obstruct vision of traffic signs, or obstruct view of any street or alley intersection. The minimum clearance of any overhanging portion thereof shall be ten (10) feet over sidewalks, and twelve (12) feet over all streets except truck thoroughfares which shall have a clearance of sixteen (16) feet.

A. Notice to Prune Should any person or persons owning real property bordering on any street fail to prune trees as herein above provided, the Municipal Arborist shall order such person or persons, within three (3) days after receipt of written notice, to so prune such trees.

B. Order Required The order required herein shall be served by mailing a copy of the order to the last known address of the property owner, by certified mail.

C. Failure to Comply When a person to whom an order is directed shall fail to comply within the specified time, it shall be lawful for the municipality to prune such trees, and the exact cost thereof shall

to be provided by law in the case of special assessments.

Section 10. Abuse or Mutilation of Public Trees.

Unless specifically authorized by the Municipal Arborist, no person shall intentionally damage, cut, carve, transplant, or remove any tree; attach any rope, wire, nails, advertising posters, or other contrivance to any tree, allow any gaseous liquid, or solid substance which is harmful to such trees to come in contact with them; or set fire or permit any fire to burn when such fire or the heat thereof will injure any portion of any tree.

Section 11. Interference With Municipal Arborist.

No person shall hinder, prevent, delay, or interfere with the Municipal Arborist or any of his assistants while engaged in carrying out the execution or enforcement of this Ordinance; provided, however, that nothing herein shall be construed as an attempt to prohibit the pursuit of any remedy, legal or equitable, in any court of competent jurisdiction for the protection of property rights by the owner of any property within the municipality.

Section 12. Protection of Trees.

All trees on any street or other publicly owned property near any excavation or construction of any building, structure, or street work, shall be guarded with a good substantial fence, frame, or box not less than four (4) feet high and eight (8) feet square, or at a distance in feet from the tree equal to the diameter of the trunk in inches D.B.H., which ever is greater, and all building material, dirt, or other debris shall be kept outside the barrier.

No person shall excavate any ditches, tunnels, trenches, or lay any drive within a radius of ten (10) feet from any public tree without first obtaining a written permit from the Municipal Arborist.

Section 13. Placing Materials on Public Property.

No person shall deposit, place, store, or maintain upon any public place of the municipality, any stone, brick, sand, concrete, or other materials which may impede the free passage of water, air, fertilizer to the roots of any tree growing therein, except by written permit of the Municipal Arborist.

Section 14. Violation and Penalty.

Any person, firm, or corporation violating or failing to comply with any of the provisions of this Ordinance shall be guilty of misdemeanor, and upon conviction thereof shall be fined a sum no less than one (\$1.00) dollar, nor more than five thousand (\$5,000.00) dollars, or may be imprisoned for a term not exceeding sixty (60) days, or both.

Section 15. Legality of Ordinance and Parts Thereof.

Should any section, clause, or provisions of this Ordinance be declared by the Courts to be invalid, the same shall not affect the validity of the Ordinance as a whole, or parts thereof, other than the part so declared to be invalid.

Section 16. Emergency.

This Ordinance is hereby declared to be of immediate necessity for the preservation of public peace, health, and safety, and shall be in full force and effective from and after its passage and publication as provided by law.

Passed this _____ day of _____, 19____.

Signed this _____ day of _____, 19____.

_____, Mayor

Attest: _____,
Municipal Clerk

Forestry Ordinance

FORT WORTH, TEXAS

AN ORDINANCE RECOGNIZING, CREATING AND DESIGNATING THE FORESTRY DIVISION OF THE DEPARTMENT OF PUBLIC PARKS IN THE CITY OF FORT WORTH AND REGULATING THE PLANTING, PROTECTION, CARE, REMOVAL AND CONTROL OF TREES ON PUBLIC HIGHWAYS, PUBLIC PLACES, PUBLIC SQUARES AND OTHER PLACES IN THE CITY OF FORT WORTH: PRESCRIBING THE POWERS AND DUTIES OF THE CITY FORESTER AND PROVIDING A PENALTY FOR THE VIOLATION OF THIS ORDINANCE.

WHEREAS, under the provisions of Section 5, Chapter 18, of the Charter of the City of Fort Worth, the Department of Public Parks has designated and created a Forestry Division; and

WHEREAS, the public welfare, convenience and general beautification of the City demands that proper protection and consequent regulation be had over the trees, shrubbery and plants located in public places in said City; NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH:

SECTION I.

That the Forestry Division of the Department of Public Parks is hereby granted jurisdiction, authority, control and supervision over all trees, plants and shrubs planted or growing in or upon the public highways and public places in the City of Fort Worth and the planting, removal, care, maintenance and protection thereof.

SECTION II.

That the Forestry Division of the Department of Public Parks shall have the power to plant, preserve, spray, trim, cable or remove any tree, shrub or plant on any street, alley,

avenue, land, lane, public ground or square belonging to the City. If any tree or any part thereof is in an unsafe condition, or is injurious to the common good, or to sewer pipes, pavements, improvements, or is infested and dangerous to other trees, power is hereby given to the Forestry Division of the Department of Public Parks to remove said trees or part thereof, or spray said tree, or order said tree or part thereof removed. If any tree or shrub on any private property is infested and, in the opinion of the City Forester, is infectious and liable to spread any disease, or if any tree or shrub is dangerous to the public, power is hereby given to the Forestry Division of the Department of Public Parks to enter said property and spray said tree or shrub, or remove same or any part thereof.

SECTION III.

That it shall be unlawful for any person, firm or corporation to cut or break any branch of any tree or shrub or injure in any way the bark of said tree or shrub growing on any public highway or public grounds. No person, firm or corporation shall allow any injurious substance such as gas, salt or oil to come in contact with any public tree, plant or shrub.

SECTION IV.

That whenever any person, firm or corporation plans to do any sort of construction work around any public tree, plant or shrub, proper guards, to be approved by the City Forester, shall be placed around said tree, plant or shrub.

SECTION V.

That any person, firm or corporation having any electrically charged wire, which is in contact with any tree, plant or shrub and which, in the opinion of the City Forester, is injurious to said tree, plant or shrub, shall remove said wire or shall place proper insulation about said wire. If said tree, plant or shrub is to be pruned notice shall be served on the owner of said wires and current shall be discontinued

within forty-eight hours after notified, for the period necessary for pruning or repairing said tree, plant or shrub.

SECTION VI.

That it shall be unlawful for any person, firm or corporation to attach any cable, wire, rope, sign or any other thing to any public tree, without a permit from the Forestry Division.

SECTION VII.

That it shall be unlawful for any person, firm or corporation to plant, prune, remove, paint or spray any tree, plant or shrub on any public highway or public place without first securing a permit from the City Forester.

If more than one tree, plant or shrub is to be planted on the street, the Forestry Division of the Department of Public Parks shall require the applicant to fill in the necessary form showing his intentions.

SECTION VIII.

That whenever any electric light, telephone or other public utilities, firms or corporations wish to prune trees, for the purpose of protecting their wires, they must first secure a permit from the Forestry Division of the Department of Public Parks and must pay expense of an inspector appointed by the Forestry Division of the Department of Public Parks to supervise said pruning.

SECTION IX.

That all trees, plants and shrubs growing between the sidewalk and the curb are the property of the City of Fort Worth and shall be under the control of the Forestry Division of the Department of Public Parks.

SECTION X.

That no person, firm or corporation shall engage in a business or trade or shall solicit employment for the purpose of pruning, repairing or spraying any tree, plant or

shrub, either on a street or in any public place or on any private grounds unless he possesses a permit from the Forestry Division of the Department of Public Parks. Instruction will be given to any person, firm or corporation and upon request printed matter regarding pruning, spraying and general tree repair work will be furnished.

SECTION XI.

That this ordinance shall take effect and be in full force and effect from and after the date of its passage and five days publication as required by law.

SECTION XII.

That the holding or adjudication of any section or subdivision of any section or part of any subdivision of any section of this ordinance to be invalid, shall not affect the validity of any other section or part of the subdivision of the section thereof, but all other sections, subdivisions and parts of subdivisions of sections shall be and remain in full force and effect.

SECTION XIII.

That any person, firm, association, partnership or corporation, agent or employee thereof, who shall violate any of the provisions of this ordinance shall be guilty of a misdemeanor and, upon conviction thereof in the corporation court, shall be subject to a fine of not less than Ten Dollars (\$10.00) nor more than Two Hundred Dollars (\$200.00).

Portland, Oregon Tree Ordinance

20.40.045	Superintendent.
20.40.050	City Forester.
20.40.070	Planting of Trees.
20.40.080	Maintenance of Trees.
20.40.090	Removal of Trees.
20.40.100	Permit Requirements and Conditions.
20.40.105	Major Improvements.
20.40.110	New Subdivision.
20.40.120	Protection.
20.40.130	New Streets.
20.40.140	Liabilities and Responsibility for Costs.
20.40.150	Historic or Notable Trees.
20.40.160	Disposition of Wood from Trees.
20.40.170	Nuisances-Abatement Procedure.
20.40.180	Abatement by Owner, Administrative Review, Appeal to the Code Hearings Officer.
20.40.185	Administrative Review.
20.40.190	Abatement by the City.
20.40.195	Notice of Assessment.
20.40.200	Personal Liability of Owner.
20.40.205	Cost of Abatement; Low Income, Elderly Persons.
20.40.210	Criminal Penalty.
20.40.220	Civil Remedies.
20.40.230	Institution of Legal Proceedings.
20.40.240	Severability.

Chapter 20.40

(Added by Ord. 134330; New Chapter substituted by 159490; Mar. 12, 1987.)

STREET TREE AND OTHER PUBLIC TREE REGULATIONS

Sections:

20.40.010	Purpose.
20.40.020	Definitions.
20.40.030	Urban Forestry Commission.
20.40.035	Technical Assistance.
20.40.040	Urban Forestry Master Plan.

20.40.010 Purpose. The purpose of this Chapter is the managing, conserving and enhancing the existing trees located in the parks and public areas owned by the City of Portland and in public rights-of-way, and thereby enhancing the appearance of the City and protecting an important environmental and economic resource for the benefit of the City's residents and visitors, and for the purpose of assisting property owners and public agencies to improve and maintain trees in a manner consistent with adopted City policies.

20.40.020 Definitions. As used in this Chapter, the singular includes the plural and vice versa.

C. The Commission shall meet at least monthly and may meet more often.

D. The Commission shall:

1. Provide assistance in the development of the Urban Forestry Master Plan, submit the same to the City Council for approval, and review and update such plan periodically.

2. Advise the Forester, Superintendent and Bureau of Parks and Recreation Budget Advisory Committee on the preparation and contents of the Annual Forestry Unit budget request.

3. Review plans and policies developed pursuant to other City Code provisions which contain elements or which affect matters related to Urban Forestry and arboricultural concerns in the City and other matters brought forward by the Forester and others.

4. Prepare and submit to the Commissioner of Parks and Recreation an annual report which shall contain a section or sections specifically dealing with the relations with and concerns of the various City bureaus.

20.40.035 Technical Assistance.

A. The Forester shall assist the Forestry Commission in the discharge of its duties.

B. When requested by the Urban Forestry Commission and Commissioner In Charge, the City may retain the services of a professional review panel of not more than three members, either foresters, arboriculturists, landscape architects or some combination thereof to advise the Commission on the efficiency of proposed actions and planting schemes. At least one member of this panel should be very familiar with Portland. The Forester shall present a list of qualified names to the Forestry Commission for its review and selection. No member of the professional review panel shall serve if he/she has a conflict of interest.

20.40.040 Urban Forestry Master Plan.

A. The Urban Forestry Commission shall develop and establish a

Comprehensive Urban Forestry Plan for the planting, maintenance and replacement of trees in parks, along streets or in other public areas. When a portion of such plan has been developed and established, it shall be submitted to the City Council for adoption prior to implementation. The Forester shall seek the advice of any bureau which will be affected by the plan.

B. The Forester shall maintain a list of approved varieties of trees that may be planted on any street or in any park or public area, consistent with the provisions of the plan.

C. All tree planting, maintenance and removal shall comply with and conform to the Plan or such portions thereof as shall have been adopted at the time of the planting, maintenance or removal.

20.40.045 Superintendent. The Superintendent shall have the following responsibilities relating to the Urban Forestry Commission:

A. Preserve and enhance the Urban Forest.

B. Develop and maintain the Urban Forestry Master Plan.

C. Carry out the other responsibilities applicable to the Urban Forestry Commission.

D. The Superintendent will meet with the Urban Forestry Commission upon their written request.

E. The Superintendent shall administer and monitor the implementation of the Master Plan.

F. Upon 15 calendar days' written notice from the City Engineer of impending, non-emergency road or sewer maintenance activities, the Superintendent shall implement and carry out the abatement procedures in Section 20.40.270 as necessary to provide tree branch clearances over the street as set forth in Title 17.

20.40.050 City Forester. There shall be a City Forester position within the Bureau of Parks and Recreation. The position shall be filled by a qualified arborist. The duties of the City Forester are:

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to be paid by the City of Portland for all expenses, including attorney fees, incurred by the City in defense of or paid by the City in settlement or satisfaction of any claim, demand, action or suit brought by reason of that property owner's failure to satisfy the obligations imposed by Titles 16, 17, 20 and 33 of the Code of the City of Portland.

D. Whenever the owner or owners, lessees, occupants or persons in charge of private grounds shall neglect or refuse to prune any tree as provided in this Section, the Forester may prune or treat or cause to be pruned or treated such tree. The person remedying the condition shall be authorized to enter the premises for that purpose.

E. Pruning for or by a utility. Upon obtaining a written permit from the Forester, a utility maintaining its utility system in a street may prune or cause to be pruned, using proper arboricultural practices in accordance with said permit, any tree located in or overhanging the street which interferes with any light, pole, wire, cable, appliance or apparatus used in connection with or as a part of the utility system; but no tree shall be pruned without the consent of the abutting owner until the utility shall have given a written or printed notice to the owner or occupant of the premises. The owner or occupant has one month after receipt of notice to have said trees pruned by a qualified line clearance contractor, at the owner's or occupant's expense, and in accordance with the terms of the permit. If the owner or occupant fails, neglects or refuses to have such tree pruned as required by the notice and permit, the utility may prune or cause to be pruned, the tree at its expense in accordance with the conditions of the permit. The Forester, at his/her discretion, may waive the notification and single tree permit process if the utility adequately demonstrates the ability to meet the performance requirements of this Section and to apply consistently proper arboricultural practices to the pruning of trees.

F. Nothing in this Chapter shall be deemed to impose any liability upon any member of the City Council or the City, or any of its officers or employees nor to

relieve the City of Portland of its duty from the duty to prune trees in accordance with Titles 16, 17 and 20 of the Code of the City of Portland.

G. The City may accept gifts which are specifically designated for the purpose of planting or maintaining trees within said City.

20.40.090 Removal of Trees.

A. Diseased trees. When any tree located on a street or on private property is diseased or infested with insects or is, in the opinion of the Forester, infectious and may spread such disease or insects to other trees in the City, the Forester may summarily abate or remove or treat the tree or cause same to be removed or treated at the property owner's expense.

B. Regulations regarding root interference with sewers and damage to curbs and sidewalks are set forth in Title 17, Public Improvements, of the Code of the City of Portland.

C. The Forester may abate or remove or cause to be abated or removed any tree located in the street area of which encroaches from private property into the street area because of age, disease or other debilitating cause, death, insecure root system or any other condition which, in the opinion of the Forester, causes its continued existence to be detrimental to the public interest. The Forester may require that the removed tree be replaced with a new tree at the expense of the property owner.

D. It shall be unlawful for any person, without a prior written permit from the Forester, to remove, destroy, cut, break, or injure any tree, or to remove, except as provided in this Chapter, any tree that is planted or growing in or upon any street, park or public area or cause or authorize or procure any person to do so; or injure, misuse or remove any device set for the protection of any tree in or upon any street.

E. The approval of a tree removal by the Forester may be conditioned on replacement with a new tree of approved variety if the Forester finds the replacement necessary to maintain an

Plans and specifications for planting such areas shall be integrated into the general plan of improvements and it shall be the duty of the City Engineer to coordinate the design of such improvements with the Forester and Planning Bureau prior to completion of final overall plans.

20.40.140 Liabilities and Responsibility for Costs. Nothing in this Chapter shall be deemed to impose any liability upon any member of City Council or the City or any of its officers or employees nor to relieve the owner or occupant of any private property from the duty to keep his/her private property, sidewalks, planting strip and trees in front of such private property in a safe condition so as not to be hazardous to public travel nor to relieve said property owner of the obligation to pay the cost of planting, removal and replanting of street trees in the planting strip adjacent to the property of said property owner or to relieve said property owner of liability to persons injured or otherwise damaged by reason of the property owner's failure to keep his/her private property, sidewalks, planting strips and trees fronting such private property in a safe condition so as not to be hazardous to public travel, as required by Titles 16, 17 and 20 of the Code of the City of Portland. Furthermore, every property owner shall be liable to the City of Portland for all expenses, including attorney fees, incurred by the City in defense of or paid by the City in settlement or satisfaction of any claim, demand, action or suit brought by reason of that property owner's failure to satisfy the obligations imposed by Title 16, 17, 20 and 33 of the Code of the City of Portland.

20.40.150 Historic or Notable Trees. The Forester shall, as soon as possible after passage of this Chapter and annually thereafter, prepare or cause to be prepared a list of trees within the City which because of their age, type, notability or historical association are of special importance. Upon recommendation of the Historic Landmarks Commission and

approval of the City Council, such a tree will be designated an "Historic Tree."

When a tree is designated as an historic tree, a plaque so designated may be placed upon or near said tree. It shall become the obligation of the Forester to maintain said tree and if such tree is upon private property, the Forester shall notify the owner of such tree that it has been designated as an historic tree and may thereafter be maintained by the Forester upon consent of the property owner.

An historic tree may not be removed without a public hearing before the Commission at least 30 days prior to the proposed date of removal.

This Chapter is intended to give, and does hereby give, full and complete authority to the Forester over any and all historic trees in the City.

20.40.160 Disposition of Wood from Trees. All wood removed from trees located in either public rights-of-way or public areas shall be disposed of at the discretion of the Forester who has complete authority for the disposal of said wood and debris. In the event that the wood is given to the adjoining property owner, the property owner shall sign an agreement holding the City harmless.

If the Forester determines that the cost of storage or sale of the wood is not commercially feasible, he/she may cause such surplus wood to be donated to such groups or organizations as may be designated from time to time by the Superintendent of Parks. It shall be unlawful to possess or dispose of any wood from any tree that has been cut or pruned in violation of the provisions of this Chapter. Publicly financed and privately financed street improvements under permit from the City Engineer are excluded from this Section.

20.40.170 Nuisances - Abatement Procedure.

A. Any condition of any tree upon, abutting or fronting private property which is in violation of any of the provisions of this Chapter or any other applicable

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administrative review shall be given to the person filing the statement not less than 5 days prior to the time set for the review.

B. Any person aggrieved by the determination of the administrative review may appeal such determination to the Code Hearings Officer as set out in Chapter 22.10 of this Code.

20.40.185 Administrative Review.

A. Upon the request of the person filing the statement described in Section 20.40.180 of this Code, or, if a nuisance has already been abated by the City, upon referral from the Auditor, pursuant to Section 20.40.195, the Forester shall review his/her actions and decisions concerning the alleged nuisance.

B. The owner, agent of the owner or occupant of the subject property shall be given the opportunity to present evidence to the Forester in the course of said review.

C. In those instances where the nuisance has been abated by the City, the Superintendent shall have discretion to waive the cost of abating a nuisance, in whole or in part, if, in the course of its review of its decision, the Bureau finds that any of the following did not conform to the provisions of this Code:

1. The notice to remove the nuisance;
2. The work performed in abating the nuisance;
3. The computation of charges.

20.40.190 Abatement by the City.

A. If within the time fixed in this Chapter, the nuisance described in the notice has not been abated, or cause shown as specified in Section 20.40.180 why such nuisance should not be removed or abated, or where summary abatement is authorized, the Superintendent may cause the nuisance to be removed and abated.

B. Except as set forth in Section 20.40.205 whenever a nuisance is abated by the City, the Superintendent shall keep an accurate account of all expenses incurred, including an overhead charge of 26 percent for administration and a civil penalty of \$80 for each nuisance abated.

C. When the City has caused a nuisance maintained by any owner of real property, for each subsequent nuisance which is abated by the City within 2 consecutive calendar years concerning real property owned by the same person, an additional civil penalty of 50 percent (minimum of \$50) of the cost of abatement shall be added to the costs, charges and civil penalties provided for in Subsection B of this Section. The civil penalty shall be imposed without regard to whether the nuisances abated by the City involve the same real property or are of the same character.

D. The Superintendent shall, after completing the removal and abatement, file a statement of costs with the Auditor.

20.40.195 Notice of Assessment.

A. Upon receipt of the statement, the Auditor shall forthwith mail to the owner of the property therein mentioned a notice setting forth the amounts set forth in the statement and stating that the Council proposes to assess against the property the amounts set forth and that objections to the proposed assessment may be made in writing and filed with the Auditor on or before 20 days from the date of mailing such notice.

B. If objections are received on or before the expiration of such 20-day period, the Auditor shall refer the matter to the Forester for administrative review pursuant to Section 20.40.185.

C. Upon the conclusion of administrative review, or on the expiration of the 20-day period, if no objections have been received, the matter of the proposed assessment shall be determined by the Council in the regular course of business. Any objections to the proposed assessment not resolved by administrative review shall be heard and determined at such time. An assessment for such costs, penalties and overhead expenses, or so much thereof as the Council determines is proper shall be made by ordinance and shall be entered in the docket of City liens, and upon such entry the same shall constitute a lien upon the property from which the nuisance was removed and abated, which lien shall be

court of competent jurisdiction to compel compliance with or restrain by injunction the violation of any provision of this Chapter.

20.40.240 Severability. In any provision of this Chapter, or its application to any person or circumstances, is held to be invalid, the remainder of this Chapter, or the application of the provision to other persons or circumstances, shall not be affected.

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CHAPTER 10-6: TREES

Section

Article I. Diseased Trees and Firewood

- 10-6-1 Declared to be nuisance
- 10-6-2 Duty of owner to remove or control such nuisance
- 10-6-3 Right of entry by Urban Forester; inspection
- 10-6-4 Notice to owner to abate
- 10-6-5 Right of owner to appeal
- 10-6-6 Abatement by city at owner's expense
- 10-6-7 Cost of city abatement to constitute lien
- 10-6-8 Review by Department of Environmental and Conservation Services

Cross-reference:

Urban Forestry Board, see Chapter 2-4, Article XXXIV

ARTICLE I. DISEASED TREES AND FIREWOOD

§ 10-6-1 DECLARED TO BE NUISANCE.

Any tree or part thereof (including but not limited to firewood) which is infected by a lethal communicable disease that is likely to spread to other trees is hereby declared to be a public nuisance ('81 Code, § 9-12-1) (Ord. 880609-M)

§ 10-6-2 DUTY OF OWNER TO REMOVE OR CONTROL SUCH NUISANCE.

It shall be unlawful for any person, owner or occupant having supervision or control of any lot, tract, parcel of land or portion thereof, occupied or unoccupied, improved or unimproved, within the corporate limits of the city to knowingly permit or maintain on any such lot, tract or parcel any tree or part thereof which is a nuisance, and it shall be the duty of such person, owner or occupant to promptly

abate the nuisance or otherwise control such condition. ('81 Code, § 9-12-2) (Ord. 880609-M) Penalty, see § 1-1-99

§ 10-6-3 RIGHT OF ENTRY BY URBAN FORESTER; INSPECTION.

The Urban Forester is charged with enforcement of the article, and to that end may enter upon private property at all reasonable hours for purposes of inspecting trees or plants or parts thereof, and may remove such specimens as are required for the purposes of analysis to determine whether the same are infected; provided that if such premises be occupied, he or she shall first present credentials and demand entry, and if such premises shall be unoccupied, the Urban Forester shall first make a reasonable effort to locate the owner or other persons who have charge or control of the premises and demand entry. Permission of the owner, occupant or person in control of the premises is necessary for entry, except if such entry is refused, the Urban Forester or any authorized representative shall have recourse to every remedy provided by law to secure entry.

('81 Code, § 9-12-3) (Ord. 880609-M)

§ 10-6-4 NOTICE TO OWNER TO ABATE.

Subject to the provisions of § 10-6-8, the Urban Forester shall serve to the owner of the premises where a public nuisance as herein defined is found, written notice of the existence of such nuisance and an order detailing the requirements of abatement to be completed within a reasonable time to be specified in such notice, but not less than ten working days. The owner of the premises for purposes of this article means a person who has title to the property, possession of the property, whether lawful or not, or a greater right to possession of the property than all but the titled owner. The notice of abatement shall be served by registered mail or personally on the owner. If such owner cannot be found, a copy of said notice shall be placed upon said infected tree or plant or part

thereof. Failure of the owner to correct the violation within the specified time shall constitute a misdemeanor.

('81 Code, § 9-12-4) (Ord. 880609-M) Penalty, see § 1-1-99

§ 10-6-5 RIGHT OF OWNER TO APPEAL.

The owner served with notice as described in § 10-6-4 shall have the right to appeal the order of the Urban Forester to the Urban Forestry Board. Notice that such owner desires to appeal shall be submitted in writing to the Urban Forester within the time specified for abatement in the notice. Upon receipt of a notice of appeal, the Urban Forester shall schedule a meeting with the Urban Forestry Board as soon as practicable to consider such appeal. Until a final determination by the Urban Forestry Board, work required to be done by the Urban Forester shall not be required, and if the Urban Forestry Board sustains or modifies all or any part of the order, it shall set the time within which the work required to be done shall be done.

('81 Code, § 9-12-5) (Ord. 880609-M)

§ 10-6-6 ABATEMENT BY CITY AT OWNER'S EXPENSE.

If any work required to be done by the Urban Forester or Urban Forestry Board is not accomplished within the time specified, the Urban Forester shall cause the work to be done at the expense of the city on the account of the owner of the property on which such work or improvements are done. Any notice given pursuant to this article shall state that if the work required is not done within the time specified, the city will cause the same to be done at the expense of the owner. A statement of costs incurred by the city shall be mailed to the owner by registered mail or personal delivery. Such statement shall be paid within 30 days of the date of mailing thereof to the Director of the Parks and Recreation Department. If the owner is unable to pay the cost of such work within 30 days, the Director of the Parks and Recreation Department is authorized to enter into an agreement to accept payment in monthly installments not to exceed six months. In the event of nonpayment, all of the actual costs to the city will be assessed on the real estate or lot on account of which expense is incurred.

('81 Code, § 9-12-6) (Ord. 880609-M)

§ 10-6-7 COST OF CITY ABATEMENT TO CONSTITUTE LIEN.

(A) In the event any of the work mentioned in § 10-6-6 is done by the city the Urban Forester shall cause a statement of the expense incurred in doing such work to be made out and certified to by him and filed with the County Clerk, stating the description of the property upon which such work was done, the character of work done and the name of the owners of such property, whereupon the city shall have a privileged lien upon the land or premises upon which such work was done for the amount of such expenditure, second only to liens for lawful ad valorem taxes, and liens for street improvements, together with interest on such amounts at the rate of 10% per annum.

(B) For any such expenditures and interest, suit may be instituted and a personal judgment obtained against the owner of such property and recovery and foreclosure had in the name of the city against the owner of such property in any court having jurisdiction, and the statement of expenditures so made and filed, or a certified copy thereof, shall be prima facie proof of the amount expended in any such work or improvement.

(C) At least 60 days prior to foreclosure of the city's lien, the city shall send written notice to all mortgages of such property according to the county real property records. The notice shall state that the city has a privileged lien to secure unpaid sums due by the property owner under this section. Such notice shall be mailed certified mail, return receipt requested.

('81 Code, § 9-12-7) (Ord. 880609-M)

§ 10-6-8 REVIEW BY DEPARTMENT OF ENVIRONMENTAL AND CONSERVATION SERVICES.

In order to assure compliance with all applicable Land Development Code requirements, the Urban Forester shall submit to the city arborist, Department of Environmental and Conservation Services, a written request for review of removal of protected trees under the jurisdiction of Chapter 13-7, Article II of the Code of the City of Austin. These requests for review shall be submitted ten working days prior to owner notification. The city arborist shall respond with written comments within the ten-working day period.

('81 Code, § 9-12-8) (Ord. 880609-M)

ARTICLE IV: DRIVEWAYS AND SIDEWALKS

Section

DIVISION 1. GENERAL PROVISIONS

Division 1. General Provisions

- 13-5-60 Purpose
- 13-5-61 Definitions
- 13-5-62 License required
- 13-5-63 Bonds as prerequisite
- 13-5-64 Permit required
- 13-5-65 Exemptions from permit and license requirements
- 13-5-66 Design and construction standards
- 13-5-67 Establishment of line and grade
- 13-5-68 Relocation or replacement of certain facilities or trees
- 13-5-69 Use of right-of-way
- 13-5-70 Inspection procedures
- 13-5-71 Assignability of licenses or permits
- 13-5-72 Automatic suspension
- 13-5-73 Fraudulent applications
- 13-5-74 Authority of Director of the Public Works and Transportation Department
- 13-5-75 Alternate materials, designs and construction methods

Division 2. Driveways

- 13-5-81 Driveway permit applications
- 13-5-82 Restrictions on issuance
- 13-5-83 Defective conditions or special uses; abandonment of existing curb openings or driveway approaches
- 13-5-84 Traffic access requirements for principal roadway areas
- 13-5-85 Traffic access requirements for hill country roadways
- 13-5-86 Driveway standards for water supply watersheds

Division 3. Sidewalks

- 13-5-91 Sidewalk installation in subdivisions
- 13-5-92 Sidewalk installation with site plans

§ 13-5-60 PURPOSE.

The purpose of this division is to provide minimum standards, provisions and requirements for safe and convenient access to abutting private property along streets and highways; to provide for environmentally sound design; to avoid unnecessary removal of trees; to provide suitable geometric layout, materials and methods of construction of sidewalks, driveway approaches, curbs, gutters and appurtenances on public property; to utilize and protect trees in order to better control rainwater runoff and land erosion; and to increase visual and noise buffering without restricting safe sight distances for traffic maneuvers. The right of the public to unhampered passage on the public streets and sidewalks shall be held paramount to other interests.

§ 13-5-61 DEFINITIONS.

Subject to additional definitions contained in § 1-1-2 of this Code of Ordinances and in other chapters, articles, divisions, parts, or sections of this Land Development Code, and unless the context otherwise requires, in this Land Development Code:

CONTRACTOR means any person engaged in the business of installing or altering sidewalks, driveway approaches, curbs, gutters, pavements or appurtenances on public property. This term shall also include those who represent themselves to be engaged in the business whether or not actually doing the work.

CURB means a vertical sloping structure located along the edge of a roadway, normally constructed integrally with the gutter, which strengthens and protects the pavement edge and clearly defines the pavement edge to vehicle operators.

DRIVEWAY APPROACH means a facility between the roadway and private property designed for and intended to provide vehicular access from the roadway.

to private property.

ENCROACHMENT means any structure or device positioned within, over or upon right-of-way that is not the property of the city.

GUTTER means a generally shallow waterway adjacent to a curb used or suitable for drainage of water.

PEDESTRIAN WAY means those portions of a street right-of-way not used for a roadway.

ROADWAY means that portion of a street or alley designed or ordinarily used for vehicular travel.

SIDEWALK means the paved portion of a pedestrian way, generally constructed of concrete or other durable materials.

TYPE 1 DRIVEWAY APPROACH means a concrete driveway approach designed and intended to serve as access from a roadway to a lot or parcel of land which is a location for a one or two family residence.

TYPE 2 DRIVEWAY APPROACH means a concrete driveway approach designed and intended to serve as access from a roadway other than a Principal Roadway Area as defined in Chapter 13-2 to a lot or parcel of land used for any development or purpose other than a one or two family residence.

TYPE 3 DRIVEWAY APPROACH means a temporary driveway approach intended to provide vehicular access to a lot or parcel of land from a roadway not yet constructed with permanent lines and grades.

TYPE 4 DRIVEWAY APPROACH means a concrete or asphalt driveway approach designed and intended to serve as access from a Principal Roadway Area roadway to a lot or parcel of land used for any development or purpose other than a one or two family residence.

§ 13-5-62 LICENSE REQUIRED.

No person shall engage in the construction, construction, alteration, removal, replacement, repair,urfacing or resurfacing of sidewalks, curbs, gutters or driveway approaches or work incident to a pedestrian

way within the city without first obtaining an annual license to engage in such work from the Director of the Public Works and Transportation Department. The Director may approve a license when the Director finds the applicant is qualified by reason of experience in the field and has furnished the bond required by this division. Individuals employed by and under the general supervision of a licensed contractor who is normally engaged in such work shall not be required to obtain a license. A license shall remain in effect until the end of the calendar year in which it was issued or renewed unless suspended or revoked.

§ 13-5-63 BONDS AS PREREQUISITE.

(a) At the time application for a license is made, the applicant shall furnish to the city a bond in a form to be approved by the City Attorney, in an amount established by the Director of the Public Works and Transportation Department, and payable to the city with a corporate surety which is authorized to do business in Texas. In establishing the amount of a bond said Director shall consider:

(1) The costs of past projects and the projected costs of projects to be undertaken by the applicant; and

(2) The potential damage which the applicant's activities may cause.

(b) The term of the bond shall run concurrently with the license. It shall be for the use and benefit of the city and all persons who may suffer injury resulting from the manner of construction of the improvements governed by this division. It shall be conditioned so that the principal therein will protect the city and all persons from loss, damage or any injury arising from any negligence in the performance of any such work or incident thereto, or from failure to faithfully observe and comply with the ordinances and specifications of the city for construction or repair work.

(c) If the bond lapses or is terminated, canceled or suspended for any reason, the license and permits issued to the contractor shall be immediately void. Work shall not resume until a new or renewed license is granted and a new or reinstated permit is approved.

§ 13-5-64 PERMIT REQUIRED.

(a) No person shall construct, reconstruct, alter, repair, remove, place, replace, pave, repave, surface or resurface a sidewalk, curb, gutter, driveway approach or appurtenance, or perform work incidental to a pedestrian way; nor shall any person in connection with any such construction, reconstruction, alteration, repair, removal, placement, replacement, paving, repaving, surfacing, resurfacing, or other incidental construction remove any tree on public right-of-way within the city without first obtaining a valid construction permit issued by the Director of the Public Works and Transportation Department.

(b) A separate permit shall be required for each lot or tract of land. A permit application shall be filed by a licensed contractor or the authorized representative of a licensed contractor with the Director of the Public Works and Transportation Department.

(c) Construction authorized by a permit shall be subject to the requirements of Chapter 13-1 and this division except that minor repairs or construction, as determined by the Director of the Public Works and Transportation Department, shall be exempt from the license requirements. The form of exemptions authorized by this section shall be as approved by the City Attorney.

(d) The permit otherwise required by this section is not required if the proposed construction is in accordance with an approved site plan.

§ 13-5-65 EXEMPTIONS FROM PERMIT AND LICENSE REQUIREMENTS.

(a) Any city department, including its contractors and agents; public utility; or franchise holder shall not be required to obtain a permit when normally engaged in the work described in this division. Contractors and agents of franchise holders shall, however, comply with the licensing requirements in this division. City franchise holders shall not be required to pay any license fee.

(b) Driveway approaches that are constructed or altered by the Texas Department of Transportation shall be subject to the requirements of this article

except that such construction is exempt from permit fees and the issuance of a permit.

(c) The construction of driveway approaches, curbs, gutters, sidewalks, or appurtenances on existing or proposed pedestrian ways do not require a permit if the construction is related to a new subdivision, is included on the subdivision's approved street and drainage construction plans, and is completed with the streets and drainage systems. Sidewalks, curbs, gutters, and driveway approaches constructed in a new subdivision shall not be finally accepted until all utility connections are complete and any cuts required by the utility installation have been restored. The exemption provided by this subsection (c) does not apply after acceptance of street and drainage construction by the city.

§ 13-5-66 DESIGN AND CONSTRUCTION STANDARDS.

(a) Sidewalks, driveway approaches, curbs, gutters, pavements, and appurtenances on public property and other facilities to provide access to abutting property shall be designed, constructed, provided, altered or repaired in accordance with the Transportation Criteria Manual. Curbs and gutters shall also comply with the Drainage Criteria Manual.

(b) To ensure safe and efficient pedestrian and vehicular traffic movement, all existing driveways may be required to conform with this division and the Transportation Criteria Manual, including driveway closing and curb construction where required, as a condition of the approval of any application for zoning, rezoning, or site plan. The Director of the Public Works and Transportation Department shall have the authority to require driveway closings and curb construction as a condition of the approval of an administrative site plan and may recommend to the Planning Commission and Council that driveway closing or curb construction be required as a condition of zoning and rezoning. The Director's action shall be based on criteria defined in the Transportation Criteria Manual.

(c) All access to a lot from an alley must be approved by the Director of the Public Works and Transportation Department. Existing unpaved alleys may be required by the Director to be paved for all or a portion of the entire length when access from an

alley is proposed in an application for zoning, rezoning, or site plan approval.

(2) Phase 2: Final inspection of construction, including cleanup.

§ 13-5-67 ESTABLISHMENT OF LINE AND GRADE.

The establishment of line and grade and the setting of line and grade stakes and their protection shall be the responsibility of the applicant and, if required by the Director of the Public Works and Transportation Department, shall be set under the direct supervision of a registered public surveyor or registered professional engineer.

§ 13-5-68 RELOCATION OR REPLACEMENT OF CERTAIN FACILITIES OR TREES.

If relocation of any public utility equipment, service, facility, or storm water drainage facility is required due to the nature of the proposed construction, the applicant for the permit required by this division shall be responsible for all costs of such relocation. If relocation or replacement of any trees is required as a condition of the permit, the applicant shall be responsible for relocation or replacement in accordance with the direction of the Director of the Department of Environmental and Conservation Services.

§ 13-5-69 USE OF RIGHT-OF-WAY.

The use of barricades during the repair or construction of sidewalks, driveways, curbs, gutters, pavement, and appurtenances on public property or any work which requires occupancy of any portion of any public right-of-way shall conform to the provisions of Article I, Division 2.

§ 13-5-70 INSPECTION PROCEDURES.

Inspection procedures for construction authorized by this article shall be determined by the Director of the Public Works and Transportation Department and shall include the following:

(1) Phase 1: Inspection of line and grade, forms, reinforcing steel, drainage and subgrade before concrete or other final courses of material are placed, and

§ 13-5-71 ASSIGNABILITY OF LICENSES OR PERMITS.

No license or permit issued under this division or any construction to be done thereunder, shall be assigned or transferred. The licensee and permittee shall retain general supervision of all work to be done thereunder.

§ 13-5-72 AUTOMATIC SUSPENSION

Each permit shall be automatically suspended if construction results in damage to or interferes with any public utility equipment or service, storm water drainage facility or tree in the pedestrian way without prior approval by the owner of the utility service, drainage system, or pedestrian way. The permit shall be reinstated by the Director of the Public Works and Transportation Department only upon a finding that the damage has been compensated and the interference has been eliminated.

§ 13-5-73 FRAUDULENT APPLICATIONS.

A permit based upon a fraudulent application shall not operate as granting any right and shall be void upon discovery of such fraud.

§ 13-5-74 AUTHORITY OF DIRECTOR OF THE PUBLIC WORKS AND TRANSPORTATION DEPARTMENT.

(a) The Director of the Public Works and Transportation Department has the authority and duty to control and regulate improvements and facilities placed upon public property in accordance with this chapter, to suspend or revoke (in accordance with the provisions of Chapter 13-1) any permit or license issued pursuant to this chapter, and to cause to be removed from public property any unauthorized obstruction or encroachment.

(b) The Director of the Public Works and Transportation Department has the authority and responsibility to cause the repair and maintenance of

all roadways and facilities in the street right-of-way.

§ 13-5-75 ALTERNATE MATERIALS, DESIGNS AND CONSTRUCTION METHODS.

The Director of the Public Works and Transportation Department may authorize the use of types of materials, designs, or methods of construction as an alternate for the types of materials, designs, or methods of construction specifically required by this article and the Transportation Criteria Manual, if such alternate types of materials, designs, or methods of construction are sufficient, safe, durable, and equivalent to the standards set out in this article and the Transportation Criteria Manual. The approved types of materials, designs, or methods of construction shall be used and installed in accordance with the specific terms of approval.

(5) The site plan (including but not limited to on-site circulation, delineation of the intended paths, parking stalls, location of buildings, location of loading areas); and,

(6) Actual or anticipated excessive increases in vehicular traffic being routed onto local residential streets occurring as a result of any such permit.

(b) No driveway permit shall be issued unless the design of the driveway approach has been approved by the Director of the Public Works and Transportation Department or is established in accordance with an approved site plan.

(c) Any permit applicant who is aggrieved by the decision of the Director under this section may appeal the decision to the Planning Commission in accordance with the provisions of Chapter 13-1. At the time of any such appeal the Planning Commission shall consider the same factors as those detailed in subsection (a).

DIVISION 2 DRIVEWAYS

§ 13-5-81 DRIVEWAY PERMIT APPLICATIONS.

(a) The Director of the Public Works and Transportation Department shall review driveway permit applications as to their impact on vehicular and pedestrian traffic and safety and approve or deny the permit based on these considerations. No permit shall be denied unless it is determined by the Director that the proposed location of the driveway will have an adverse effect on the public safety. In making this determination, the Director shall consider:

(1) The topography of the land;

(2) Land use (including but not limited to the intensity of development and trip attraction/generation potential, mix of vehicles, turning movements);

(3) Function of the public street (including but not limited to the number of lanes, medians, median openings, vertical and horizontal curvature, sight distance, operating speeds, traffic volumes, entrance exit ramps, frontage roads);

(4) The location of nearby streets and driveways.

§ 13-5-82 RESTRICTIONS ON ISSUANCE.

(a) No permit shall be granted pursuant to the provisions of this division to provide for parking on public property between the established curb line or edge of paving and the property line except as specifically authorized by resolution of the City Council.

(b) No permit to construct a Type 2 or Type 4 driveway approach shall be granted to provide access to or from a roadway for "angle" or "head-in" parking on abutting private property where a portion of the pedestrian way is required for maneuvering into or out of the angle or head-in parking spaces except as specifically approved by the Director of the Public Works and Transportation Department.

(c) It shall be unlawful for anyone to cut the curb or to construct any driveway leading onto Lamar Boulevard between West 24th Street and West 30th Street.

**ARTICLE XII: RELEASE, LICENSES, AND VACATION
OF PUBLIC RIGHT-OF-WAY AND EASEMENTS**

Section

**Division 1. Release, Licenses for
Private Use, and Vacation**

- 13-1-950 Definitions
- 13-1-951 Release of public easement
- 13-1-952 Application for license agreement
- 13-1-953 Vacation of public right-of-way
- 13-1-954 Annual report

**Division 2. Use of Right-of-Way
for Construction Purposes**

- 13-1-965 Definitions
- 13-1-966 Criteria for issuance
- 13-1-967 Term of permit
- 13-1-968 Processing the application; appeal of denial
- 13-1-969 Fee for permit
- 13-1-970 Fee rate
- 13-1-971 Compliance Review Committee

**DIVISION 1. RELEASE, LICENSES
FOR PRIVATE USE, AND VACATION**

§ 13-1-950 DEFINITIONS.

Subject to additional definitions contained in § 1-1-2 of this Code of Ordinances and in other chapters, articles, divisions, parts, or sections of this Land Development Code, and unless the context otherwise requires, in this Article:

DIRECTOR means the Director of the Department of Public Works and Transportation, or his or her duly authorized designee.

PUBLIC EASEMENT means any easement owned by the public or any governmental entity, or any easement lawfully dedicated as an easement for some public purpose.

PUBLIC PROPERTY means property owned, whether in fee simple or otherwise, by the public or any governmental entity, or property lawfully dedicated for some public use.

PUBLIC WORKS means the Department of Public Works and Transportation of the City of Austin.

REAL ESTATE SERVICES DIVISION means the Real Estate Services Division of the Department of Public Works and Transportation of the City of Austin.

RIGHT-OF-WAY means land dedicated by any lawful means to the public or any governmental entity, including the federal government, the State of Texas and any agency or subdivision thereof, and which is reserved for street, alley, sidewalk, highway or other related purposes.
(Am. Ord. 910110-J, eff. 1-20-91)

§ 13-1-951 RELEASE OF PUBLIC EASEMENT.

A public easement may only be released in accordance with the following procedures:

(1) A person requesting a release of a public easement shall submit an application, together with a survey and a field note description for the area requested for release and a non-refundable application fee in an amount established by separate ordinance to the Real Estate Services Division.

(2) The Real Estate Services Division shall distribute the application and attached materials to city departments and franchise holders with an interest in the property in question for review and comment.

(3) If the application involves a release of a scenic, hike and bike trail, greenbelt, or other similar easement of significant public interest, the Director shall forward the application to the City Council for consideration.

(4) For all applications for releases of easements not covered by subsection (3) of this section, the Director may authorize and approve the requested release if he determines that no present or future public purpose is served by the easement.

(5) If the application is approved, the executed release of easement shall be filed in the Real Property Records of the appropriate county.

(6) If the Director or the City Council finds that a present or future public purpose or need is served by the easement, the application shall be denied. The decision of the Director to deny a release of easement under this section may be appealed by the applicant to the City Council in accordance with the provisions of Article V of this chapter.
(Am. Ord. 910110-J, eff. 1-20-91)

§ 13-1-952 APPLICATION FOR LICENSE AGREEMENT.

(a) Except as otherwise provided in this section, a license for private use of public property may only be approved in accordance with the following procedure:

(1) The applicant requesting a license shall submit an application together with a survey and a field note description to the Real Estate Division. A non-refundable application fee in an amount established by separate ordinance must be submitted with the application. Payment of this application fee shall not relieve the applicant of the requirement to pay any other fees assessed under this code, including but without limitation, the annual fees described in this section.

(2) The Real Estate Services Division shall distribute the application and attached materials to city departments and franchise holders with an interest in the property in question for review and comment.

(3) If the Director finds that the proposed license does not interfere with the public use of the property, the appraised value of the area to be licensed and the annual license fee will be established by the city. An executed License Agreement will be made available for the applicant after the city's receipt of payment in an amount equal to the annual fee.

(b) The annual fee for a License Agreement shall be calculated in accordance with the following:

(1) The minimum annual fee shall be established by separate ordinance.

(2) For surface licensing, the fee shall be 10% of the appraised value of the area subject to the license.

(3) For underground licensing, the fee shall be 5% of the appraised value of the area subject to the license.

(4) For aerial licensing, the fee shall be 7.5% of the appraised value of the area subject to the license.

(5) The annual fee will be subject to change after each two year period the license remains in effect.

(6) No annual fee will be charged (i) for any structure officially designated as a historical structure or which is located on property with a historic zoning base use district; (ii) for the property which was originally dedicated to the city without charge only if the person or entity which originally dedicated the land in question continues to possess the adjacent property or the underlying interest in the land in question; or (iii) as specifically provided in a separate ordinance establishing fees and exemptions thereto.

(7) The Director may waive the annual fee for License Agreements which, in the Director's sole discretion, benefit the licensed property.

(c) If the License Agreement provides for an activity or encroachment which, in the opinion of the Director, is unusual or of significant public interest, the Director may, in his or her sole discretion, forward the proposed License Agreement to the City Council for consideration. Activities or encroachments which are unusual or of significant public interest may include, but are not limited to, pedestrian bridges or buildings over streets or alleys, or basements or tunnels under streets or alleys.

(d) License Agreements under this section shall contain:

(1) A termination clause enabling the City

Council to terminate the license without cost to the city following 90 days written notice to the licensee and to the affected adjoining landowners, if applicable.

(2) Provisions addressing insurance requirements and establishing liens on the applicant's property adjacent to or covered by the License Agreement.

(3) Such other provisions which, in the Director's sole discretion, are necessary to protect the interests of the city.

(e) This section shall not apply to the following:

(1) Temporary construction barricades;

(2) Banners over streets;

(3) Temporary street closings;

(4) Minor or temporary encroachments which, in the sole discretion of the Director, are adequately covered by other regulations to protect the interests of the city.

(f) The decision of the Director to deny a license may be appealed by the applicant to the City Council in accordance with Article V of this chapter. Before such an appeal may be filed, (i) the city must first have completed an appraisal of the value of the property in question, and (ii) the applicant must first have submitted to the Director the amount of the first annual fee and a written statement describing the basis of the appeal.

(Am. Ord. 910110-J, eff. 1-20-91)

§ 13-1-983 VACATION OF PUBLIC RIGHT-OF-WAY.

(a) Subject to the requirements of state law, public right-of-way may be vacated in accordance with the following procedure:

(1) A property owner requesting vacation of right-of-way adjoining his or her property shall submit an application to the Real Estate Division. A non-refundable application fee in an amount established by separate ordinance must be submitted with the application. Payment of this application fee shall not relieve the applicant of the requirement to pay any other fees assessed under this code, including but

without limitation, the payment for appraised value described in this section.

(2) The Real Estate Services Division shall distribute the application and attached materials to city departments and franchise holders with an interest in the right-of-way for review and comment.

(3) If the Director determines that the right-of-way serves no present or future public purpose, the Director may approve the application and submit it to the Urban Transportation Commission and the Planning Commission for their concurrent or sequential review. If the commissions have not forwarded an objection to the Director within 30 days from the date the Director first submitted the application to the commission for review, then the commission shall be deemed to have recommended vacation of the right-of-way and the Director may then process the application.

(4) If both commissions recommend vacation of the right-of-way, the Real Estate Services Division shall determine the appraised value of the area to be vacated. The value of the property will be determined by an appraisal prepared by the Real Estate Services Division or, at the sole discretion of the Director, by an independent appraiser engaged by the city. All owners who will receive any portion of the vacated right-of-way shall submit to the Real Estate Services Division a payment in the amount equal to the appraised value as determined by the city. The appraised value may be offset by the simultaneous dedication of right-of-way which would not otherwise be required as part of the development of the property. If the application is ultimately denied, the payment shall be returned to the applicant.

(5) For requested vacations of developed streets or alleys, the Director shall take the following additional action:

(A) Notify all notice owners of property within 300 feet of the proposed vacated right-of-way that the Director has received an application for vacation of the described right-of-way and may approve the request after ten days of the date of the notice. The notice will solicit comment from the property owners during that ten day period.

(B) The Director will consider any comment received from the owners of property within 300 feet of the proposed vacated right-of-way in

Obstructions to Traffic

motor vehicle on that portion of the public right-of-way between the curblane and the property line.
(81 Code, § 11-2-173) Penalty, see § 1-1-99



ARTICLE II VEGETATION

§ 16-7-40 PLANTS HIGHER THAN TWO FEET.

It shall be unlawful for either the owner or the occupant of any corner lot in the city to place, maintain or permit or cause to be placed or maintained any plant having a height greater than two feet above the ground on which the plant is situated; provided, however, that no plant may be placed or maintained on the ground when the ground level at the curb is more than one foot above the street level on or in that portion of any corner which portion includes all property ten feet back from the curblane and 40 feet on either side from the street corner intersection of the curb lines.

(81 Code, § 11-2-177) Penalty, see § 1-1-99

§ 16-7-41 OBSTRUCTION OF SIDEWALKS.

It shall be unlawful for either the owner or the occupant of any lot in the city to place, maintain or permit or cause to be placed or maintained any tree, shrub or other vegetative matter on, in or overhanging the area between the property line thereof and the curblane of any street abutting such property line in such a way as to obstruct the free passage on and use of that area by the public. The determination as to what vegetative growth constitutes an obstruction authorizing abatement pursuant to § 16-7-45 shall be made by the City Manager or his designate.

(81 Code, § 11-2-178) Penalty, see § 1-1-99

§ 16-7-42 PLANTING NEAR FIRE HYDRANTS.

It shall be unlawful for either the owner or the occupant of any property in the city to place, maintain or permit or cause to be placed or maintained thereon any tree or plant within five feet of any fire hydrant in the city.

(81 Code, § 11-2-179) Penalty, see § 1-1-99

§ 16-7-43 MINIMUM CLEARANCE IN SIDEWALK AREAS.

It shall be unlawful for the owner or occupant of any property in the city to maintain or permit limbs of trees growing thereon to overhang or grow above the area between such property line and the curblane of any abutting street, unless such limbs and all branches and foliage thereon are kept trimmed to a minimum clearance of 14 feet above the street level at the nearest curblane.

(81 Code, § 11-2-180) Penalty, see § 1-1-99

§ 16-7-44 AESTHETIC GUIDELINE.

To the extent feasible, all trimming and/or removal of vegetative growth under this article shall be accomplished so as to minimize the impact on the aesthetic character of the public right-of-way which the trees, shrubs and other vegetative growth in the area fosters.

(81 Code, § 11-2-181)

§ 16-7-45 AUTHORITY OF CITY MANAGER TO TRIM, REMOVE AND THE LIKE.

The City Manager is hereby authorized to remove or cause to be removed any trees, plants or other vegetative matter between the opposite property lines in any street in the city and to trim branches, limbs or foliage of any tree or plant which overhangs or grows above the area which lies between the opposite property lines of any street, so as to provide a minimum clearance of 14 feet above the street level at the center of the street between the curb lines, or to provide an unobstructed view or to remove barriers to passage in the public sidewalk easement.

(81 Code, § 11-2-182)

RESOLUTION POLICY

City of Houston Resolution No. 90-3

A RESOLUTION ADOPTING A POLICY OF LANDSCAPING IN CONNECTION WITH CITY OF HOUSTON ROADWAY AND FACILITY CONSTRUCTION.

* * * * *

WHEREAS, it is the intention of the City of Houston that construction of City streets and thoroughfares as well as City Facilities include trees and landscaping; and

WHEREAS, trees are an integral part of the City street and thoroughfare system; and

WHEREAS, it is the intention of the City of Houston to include trees and other appropriate landscaping in the design and construction of City streets, thoroughfares and other City facilities; NOW, THEREFORE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF HOUSTON:

Section 1. That the policy of the City of Houston shall be to expend a maximum of one percent of construction costs of roadway and Facility improvements for landscaping and beautification. Facilities as used herein shall mean structural improvements constructed by the City of Houston. Special effort shall be made in the areas of roadway beautification and water/wastewater treatment plant buffer zones. Further, it is the intention of City Council to request that the Directors of Public Works and Engineering and Parks and Recreation jointly develop procedures to accomplish and coordinate the implementation of this policy for trees, landscaping and beautification of City.

Section 2. This Resolution shall be passed finally on the date of its introduction and shall take effect immediately upon its passage and approval by the Mayor; however, in the event that the Mayor fails to sign this Resolution within five days after its passage and adoption, it shall take effect in accordance with Article VI, Section 6, Houston City Charter.

PASSED AND ADOPTED this 17th day of January, 19 90.

APPROVED this _____ day of _____, 19____.

Mayor of the City of Houston

Pursuant to Article VI, Section 6, Houston City Charter, the effective date of the foregoing Resolution is JAN 23 1990.

[Signature]
City Secretary

(Requested by Councilmember Christin Hartung)

AYE	NO	
<input checked="" type="checkbox"/>		MAYOR WHITMIRE
		COUNCIL MEMBERS
<input checked="" type="checkbox"/>		McKASKLE
<input checked="" type="checkbox"/>		McGOWEN
<input checked="" type="checkbox"/>		AB-Military Duty RYAN
<input checked="" type="checkbox"/>		ABSENT-OUT OF CITY CITY BUSINESS
<input checked="" type="checkbox"/>		CALLOWAY
<input checked="" type="checkbox"/>		MANCUSO
<input checked="" type="checkbox"/>		GOODNER
<input checked="" type="checkbox"/>		HARTUNG
<input checked="" type="checkbox"/>		GORCZYNSKI
<input checked="" type="checkbox"/>		REYES
<input checked="" type="checkbox"/>		CLARK
<input checked="" type="checkbox"/>		TINSLEY
<input checked="" type="checkbox"/>		GREENWOOD
<input checked="" type="checkbox"/>		LEE
<input checked="" type="checkbox"/>		ROBINSON

Milwaukee Trees As Infrastructure*

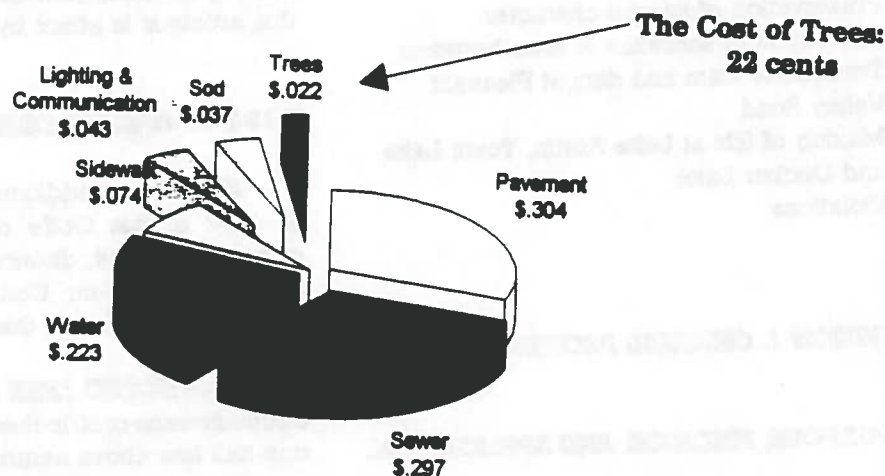
INFRASTRUCTURE COST PER STREET MILE

ITEM	COST	% TOTAL
Pavement	\$432,960	30.40%
Sewer	\$422,400	29.70%
Water	\$316,800	22.30%
Sidewalk	\$105,600	7.40%
Lighting & Communication	\$60,720	4.30%
Sod	\$52,800	3.70%
Trees	\$30,624	2.20%
TOTAL	\$1,421,904	100.00%

MILWAUKEE 1989 FORESTRY BUDGET

OPERATING FUNDS:	
TREE DIVISION:	4,899,170
LANDSCAPE DIV.	3,989,788
CAPITAL FUNDS: 443,750	
TOTAL	\$9,332,708

The Milwaukee Street Construction Dollar



NOTE: 1989 figures for one mile of residential street

\$30,624.00 = 150 Trees, B&B (2 1/2" Cultivars)

\$204.00 per tree

Planted, staked, mulched, fertilized for 3 years and maintained thru the first year
Summer watering once per week as needed

ARTICLE II: TREE AND NATURAL AREA PROTECTION

Section

Division 1. General Provisions

- 13-7-37 Purpose, findings, and application
- 13-7-38 Special definitions
- 13-7-39 Administration
- 13-7-40 Grading and tree protection plan
- 13-7-41 Action on application
- 13-7-42 Appeals
- 13-7-43 Conflicts with departmental rules

Division 2. Application and Enforcement

- 13-7-46 Removal of protected trees
- 13-7-47 Application for removal
- 13-7-48 Preservation of natural character
- 13-7-49 Relocation of shoreline at area between Tom Miller Dam and dam at Pleasant Valley Road
- 13-7-50 Making of fills at Lake Austin, Town Lake and Decker Lake
- 13-7-51 Violations

DIVISION 1. GENERAL PROVISIONS

§ 13-7-37 PURPOSE, FINDINGS, AND APPLICATION.

(a) The purpose of this article is to establish a city policy regarding the largest and most valuable trees in the city. Trees are hereby declared to be of great value in the maintenance of the public health and welfare of the inhabitants of the city, in the conservation of vital energy resources, and in the preservation of the city's historical heritage.

(b) Trees are a valuable amenity to the urban environment, creating greater human comfort by providing shade, cooling the air and otherwise tempering the effects of summer heat, restoring oxygen to the atmosphere, reducing glare, reducing noise levels, and breaking the monotony of urbanized development on the land, all of which aid in protecting

the health and general welfare of the community. Trees greatly reduce the requirements for air conditioning, thereby reducing the demands for utilization of scarce energy sources.

(c) Many trees that were growing when Austin was selected as the site of the state capital have survived while generations of people and buildings have come and gone. These trees should be preserved to the maximum extent feasible for the education and enjoyment of future generations, since large, old trees, if destroyed, can be replaced only after generations of time.

(d) This article applies to all land located within the city's zoning jurisdiction and in any areas where this article is in effect by contractual agreement.

§ 13-7-38 SPECIAL DEFINITIONS.

Subject to additional definitions contained in § 1-1-2 of this Code of Ordinances and in other chapters, articles, divisions, parts, or sections of this Land Development Code, and unless the context otherwise requires, in this Land Development Code:

PROTECTED TREE means a tree having a trunk circumference of 60 inches or more, measured four and one-half feet above natural grade level.

OWNER, for purposes of this chapter, includes any person with a freehold interest in land, or a lessee, agent, employee or other person acting on behalf of the owner with the owner's authorization.

REMOVAL means uprooting, severing the main trunk of the tree, or any act which causes or may reasonably be expected to cause the tree to die, including without limitation damage inflicted upon the root system by machinery, storage of materials, or soil compaction; substantially changing the natural grade above the root system or around the trunk; excessive pruning; or paving with concrete, asphalt, or other impervious materials in a manner which may reasonably be expected to kill the tree

TREE means any self-supporting, woody perennial plant typically having a trunk diameter of no less than two inches at maturity, measured at four and one-half feet above grade, and normally grows to an overall height of no less than 15 feet in central Texas.

§ 13-7-39 ADMINISTRATION.

(a) Portions of this article governing protected trees shall be implemented by a City Arborist under the direction of the Department of Environmental and Conservation Services. The City Arborist shall oversee regulation of the care and removal of protected trees in the city, and shall enforce and administer the provisions of this article. The City Arborist shall be appointed by the Director of the Department of Environmental and Conservation Services.

(b) Written guidelines for the interpretation of the provisions of this article, prescribing the measures required to protect trees against damage in connection with construction and property development, identifying actions that will be interpreted as "removal," and identifying the root areas requiring protection against soil compaction or against the effects of impervious paving shall be adopted in accordance with the procedures set forth in Chapter 13-1 and incorporated into the Environmental Criteria Manual.

§ 13-7-40 GRADING AND TREE PROTECTION PLAN.

For all developments for which a site plan is required, a grading and tree protection plan shall be submitted with the site plan. The plan shall cover such areas and include such information as outlined in the Administrative Manual and the Environmental Criteria Manual.

§ 13-7-41 ACTION ON APPLICATION.

(a) Upon receipt of an application to remove a protected tree, the City Arborist shall promptly inspect the subject tree and the Department of Environmental and Conservation Services shall approve or deny the application in accordance with the provisions of this article. Approval is automatically granted ten days after the application is filed if not denied during such interval, if the application for removal is not combined

with any other application or plan required by this Code. If a variance or special exception from the Board of Adjustment is required by subsection (b) below, the Department of Environmental and Conservation Services shall have an additional 45 days to process the application; provided further, that the applicant must be notified of the 45 days extension no later than ten days from the date of application.

(b) The Department of Environmental and Conservation Services shall approve an application for the removal of a protected tree located on privately owned property when a valid application therefor is received and a showing is made that the tree is so located as to prevent reasonable access to the property or as to preclude reasonable and lawful use of the property. Where removal of the tree would become unnecessary if a variance or special exception is granted by the Board of Adjustment, no application shall be approved except where the variance or special exception is denied. No application fee for a variance or special exception shall be charged when the application is required by this subsection.

(c) The Department of Environmental and Conservation Services shall approve an application for the removal of a protected tree in connection with construction, maintenance, or repair of public facilities in or above a public street, alley, right-of-way, easement, or other public land under one or more of the following conditions:

(1) The location of the tree prevents the opening of reasonable and necessary vehicular traffic lanes in a street or alley;

(2) The location of the tree prevents the construction of utility lines or drainage facilities which may not feasibly be rerouted;

(3) The location of the tree prevents all reasonable access to the property; or,

(4) Denial of the application would deny a political subdivision of the state the reasonable use of public property for the achievement of its public purposes; provided that any approval under this subsection may be reviewed by the Planning Commission at its discretion.

(d) Notwithstanding any of the foregoing provisions of this section, the Department of

Environmental and Conservation Services shall approve an application for the removal of a protected tree under the following circumstances:

(1) The City Arborist determines that the tree constitutes a hazard to life or property which cannot reasonably be mitigated without removing the tree; or,

(2) The City Arborist determines that the tree is dying, dead, or diseased to the point that its restoration to sound condition is not practicable, or that its disease can be expected to be transmitted to other trees and to endanger their health.

(e) No approval, except an approval to remove a dead, badly diseased, or hazardous tree, shall become effective until the third day after it is granted. Every approval for the tree removal shall automatically expire one year after its effective date, except approvals pursuant to § 13-7-46(c), which shall be in effect for the duration of the approvals provided by said section.

(f) Planting a replacement tree or trees or other mitigative measures may be required as a condition of approving an application for the removal of a protected tree. At the time of approval, any such conditions must have been satisfied, or fiscal security for the performance of such conditions shall be provided. Any such condition must be met within 12 months after removal of the protected tree.

§ 13-7-42 APPEALS.

If a protected tree removal application is denied, the applicant may appeal the denial to the Planning Commission, in accordance with the procedures of Chapter 13-1.

§ 13-7-43 CONFLICTS WITH DEPARTMENTAL RULES.

In any case where engineering or design standards, departmental policies, or departmental rules establish conditions that cannot be met in a specific situation without removal of a protected tree, the city department or agency responsible for enforcing the standard, policy, or rule shall, upon request of the Department of Environmental and Conservation

Services, determine what specific adverse effect would result from a waiver or modification of such standard, policy, or rule, or application thereof, to the extent necessary to save the tree. If the responsible department or agency determines there is no serious and imminent adverse effect, the standard, policy, or rule may be modified or waived. Irreconcilable differences of opinion between the Department of Environmental and Conservation Services and other city departments as to the seriousness of adverse effects resulting from a waiver or modification of the standard, policy or rule in question shall be resolved by the City Manager.

DIVISION 2. APPLICATION AND ENFORCEMENT

§ 13-7-46 REMOVAL OF PROTECTED TREES.

(a) No person shall remove or cause the removal of any protected tree without first securing approval from the Department of Environmental and Conservation Services, except as provided in subsections (b), (c), or (d) below.

(b) When any protected tree sustains damage in the form of a broken trunk, broken limbs, or uprooting, which creates a hazard to life or property, no application is required for the removal of the damaged part or parts of the tree, provided that the removal is effected before the beginning of the seventh day following the occurrence of the damage. The Department of Environmental and Conservation Services may extend this period in the case of widespread and extensive storm damage.

(c) Preliminary plans and site plans depicting any protected trees shall be submitted to the City Arborist for evaluation and recommendation before administrative approval or, when required, submission to the Planning Commission or City Council. Final approval of the preliminary plan or site plan constitutes an approval for tree removal of any protected tree specifically identified on the site plan as being removed by the development.

(d) For all City C.I.P. projects, Council approval of the project constitutes approval for removal of any protected tree specifically identified as being removed. For C.I.P. projects which require site plan approval, the

removal of a protected tree not previously identified and approved for removal as provided by the preceding sentence is subject to the provisions of subsection (c) above. Any removal of a protected tree by a C.I.P. project not otherwise addressed this subsection shall be subject to the general requirements of this chapter.

§ 13-7-47 APPLICATION FOR REMOVAL.

(a) Application for the removal of a protected tree located on public property or in any public street, alley, right-of-way, or easement shall be made by any city department or any public utility or political subdivision of the state with authority to install utility lines or other public facilities in or above the property, street, alley, right-of-way or easement on which such tree is located, or by the owner of real property abutting upon the site of the tree or its crown.

(b) Application for the removal of a protected tree located on privately owned property shall be made by the owner of the property on which such tree is located, except that any appropriate city official may make application on behalf of the owner of the property on which the tree is located to remove a tree that constitutes a hazard to the safety of persons or property, or that is seriously diseased.

(c) No fee shall be required for an application to remove a dead, diseased, or hazardous tree pursuant to § 13-7-41(d). The information required in an application for removal of a protected tree is outlined in the Administrative Manual.

§ 13-7-48 PRESERVATION OF NATURAL CHARACTER.

Projects requiring site plan review shall demonstrate that the design has been accomplished to preserve the existing natural landscape character of the site (especially trees eight inches in diameter and larger) to the extent that is reasonable and feasible. In determining whether there is compliance with this section, the City Arborist shall consider the guidelines set forth in the Environmental Criteria Manual. Planting a replacement tree or trees or other mitigative measures may be required as a condition of site plan approval. At the time of site plan release, any such conditions must have been satisfied, or fiscal security

for the performance of such conditions shall be provided. Clearing of natural vegetation on a lot is prohibited without approval of the Department of Environmental and Conservation Services except where the clearing is for the purpose of lawn care, gardening, removal of trees or vegetation damaged by natural forces, ranching, or farming.

§ 13-7-49 RELOCATION OF SHORELINE AT AREA BETWEEN TOM MILLER DAM AND DAM AT PLEASANT VALLEY ROAD.

(a) The City Council may allow or permit the transfer or relocation of existing earth material in the Colorado River or along the shores thereof located below a contour elevation of 435 feet above mean sea level where such transfer or relocation will not endanger any water supply, water supply system, storm or sanitary sewer facility, or any other public utility facility; will not create a hazard to navigation or swimming; will not materially reduce the capacity of the Colorado River basin as a water storage reservoir or as a basin for the carrying of flood waters, if the same thing were permitted to be done on all other properties similarly situated; will not constitute a hazard to the safety, maintenance and operation of any dam, bridge or other structure not owned by the applicant; or will not materially and adversely affect the use and enjoyment of other property on the Colorado River between the dam at Pleasant Valley Road and the Tom Miller Dam, which is owned by the applicant.

(b) Any person desiring to make a transfer or relocation of such earth material existing below such elevation shall make an application in writing to the City Council for such transfer or relocation, and the application shall be accompanied by a plat/plan showing the proposed layout of such transfer or relocation together with a legal description of the property on which the proposed transfer is to be made. It shall be unlawful for any person to transfer or relocate any such earth material without first securing the approval of the City Council and obtaining a permit from the Building Official.

§ 13-7-50 MAKING OF FILLS AT LAKE AUSTIN, TOWN LAKE AND DECKER LAKE.

Any person desiring to make or cause to be made any fill with junk, earth, scrap, rocks or any other

structures located within a National Register District designated by the State Historical Commission, is a violation of this Land Development Code unless the Director has certified the development, removal, or demolition complies with regulations of this Land Development Code applicable to property zoned historic or within a National Register District.

* § 13-1-603 SITE PLAN EXEMPTIONS.

(a) A site plan shall not be required for the following:

- (1) Construction, alteration, or an addition to a single-family, single-family attached, or duplex residential structure, or an accessory use to any such structure, where one structure is constructed per legal lot and, no proposed improvement is located in the 100 year flood plain, or the Director has determined that the proposed improvement would have an insignificant effect on the waterway;
- (2) Removal of a tree not protected by this Land Development Code;
- (3) Interior alteration of an existing building when the alteration does not increase the square footage, area, or height of the building;
- (4) Application for a certificate of occupancy for a change to another permitted use which does not increase off-street parking requirements from the existing use or all required parking is existing and in compliance with current codes;
- (5) Construction of a fence, but no exemption is granted by this subsection for construction of a retaining wall or for a fence that may obstruct the flow of water;
- (6) Clearing an area no greater than 15 feet in width for surveying and testing where no tree greater than eight inches in diameter is removed;
- (7) Substantial restoration within a period of 12 months of a building damaged by fire, explosion, flood, tornado, riot, act of the public enemy, or accident of any kind;
- (8) Relocation or demolition of a structure

or foundation covering no more than 10,000 square feet of site area pursuant to a demolition permit issued in accordance with this Land Development Code, with no disturbance of a tree greater than eight inches in diameter and no site clearing;

(9) Any development located outside the city's zoning jurisdiction and exempt from all watershed protection requirements of this Land Development Code;

(10) A commercial portable building located on existing impervious cover for permanent use, or for temporary use in accordance with § 13-2-321, which is placed on supports and does not impede or divert drainage, and where landscaping is provided in accordance with Chapter 13-7 and as approved by the Environmental and Conservation Services Department prior to construction.

(11) Construction which meets all of the following criteria:

(A) The additions or new construction does not exceed 1,000 square feet, except that the following items may exceed the area limitations of this subsection:

1. Enclosure of an existing staircase or porch;
2. A carport for less than ten cars placed over existing parking spaces;
3. A ground level deck of less than 5,000 square feet which is for open space use and constructed of wooden slats;
4. The replacement of an existing roof where height is not increased by more than six feet;
5. The remodeling of an exterior facade where new construction is limited to the addition of columns or awnings for windows or entrance ways;
6. Canopies over existing gas pumps and paved driveways;
7. Sidewalks constructed on existing impervious cover;

8. Replacement of up to 3,000 square feet of building or parking areas lost through condemnation, if the Director has determined that there will be an insignificant impact on drainage or any waterway.

(B) The addition complies with all applicable codes and restrictions of the City of Austin, including the Compatibility Standards requirements in this Land Development Code.

(C) The addition or change in use is not for the purpose of an adult-oriented business as defined and regulated by this Land Development Code.

(D) The addition does not increase the degree of any existing noncompliance.

(E) The addition or new construction will not create a drive-in service or increase the number of lanes of an existing drive-in service, unless the Director has determined that it will have an insignificant effect on traffic circulation and surrounding land uses.

(F) No tree eight inches in diameter or larger is proposed to be removed.

(G) The addition is not located within the 100 year flood plain, or the Director has determined that the addition would have an insignificant effect on the waterway.

(12) Any other minor site activities similar to those listed in subsections (a)(1) through (a)(11), as determined by the Director.

(13) Construction of additional facilities at an existing public primary educational facility or public secondary educational facility located within the city's zoning jurisdiction, or in a municipal utility district, if the consent agreement between the MUD and the city requires issuance of a building permit before construction, if:

(A) The addition will be used as a public primary educational facility or public secondary educational facility;

(B) No portion of the addition is located on a slope greater than 15% or in the 100 year

flood plain, a Critical Water Quality Zone, a Water Quality Buffer Zone, or on a critical environmental feature, as those terms are defined by Chapter 13-7;

(C) Off-street parking spaces required by Chapter 13-5 for the addition are provided on the site;

(D) No construction is proposed within the drip-line of a protected tree that is not to be removed; and no protected tree is removed except pursuant to the procedures established by § 13-7-41;

(E) Detention, filtration, and erosion/sedimentation controls conform with the requirements of Chapter 13-6 and Chapter 13-7; and

(F) Screening, setbacks, and height comply with applicable provisions of this Code.

(14) Construction of a new public primary educational facility or public secondary educational facility located in the full-purpose corporate boundaries of the city, if the Director of the Planning and Development Department has notified the independent school district that, if constructed and used as proposed by the independent school district, the proposed construction and use of the facility will comply with all applicable requirements of this Land Development Code, including without limitation any condition of a waiver or modification granted under § 13-2-619 (Waiver for Public School Facility). The independent school district shall submit plans, specifications, and any additional information the Director considers necessary to make the determination required by the previous sentence.

(b) The Director shall require the minimum information believed necessary, in the Director's discretion, to determine that a project is entitled to an exemption under this section.

(c) An exemption pursuant to this section does not authorize any development in violation of this Land Development Code or other applicable laws or ordinances of the city. Any previously released site

Anstin - Land Development Code

plan pertaining to the site proposed for development shall be revised pursuant to § 13-1-608(b) if deemed necessary by the Director.

(Am. Ord. 890406-B; Am. Ord. 890504-C; Am. Ord. 890824-L; Am. Ord. 891102-F; Am. Ord. 890921-K; Am. Ord. 900628-I; Am. Ord. 901108-D; Am. Ord. 910110-J; Am. Ord. 910530-D)

§ 13-1-604 SMALL PROJECTS.

(a) The following are defined as small projects for purposes of this section:

(1) Construction of a building, a parking area, or both, totalling 5,000 square feet or less of impervious cover and a maximum limit of construction of 10,000 square feet, if the proposed construction:

(A) Complies with the requirements of the Compatibility Standards set forth in Part A, Division 4, Article VI of Chapter 13-2;

(B) Is not located in the 100 year flood plain (or the Director has determined the proposed construction would have an insignificant effect on the waterway); and

(C) Does not require any variance from any watershed protection regulations.

(D) For purposes of this subsection, the "limit of construction" means the boundaries determined by the Director of an area for any development. This term includes without limitation any area for:

1. Construction;
2. Clearing;
3. Grading;
4. Access by construction equipment which does cause any soil disturbance;
5. Reconstruction of existing driveways;
6. Temporary installations, including without limitation portable buildings or construction trailers, storage of building materials,

spoils disposal areas, erosion and sedimentation controls, and stabilized construction entrances on driveways;

7. Landscaping.

(2) Construction of storm sewers less than or equal to 30 inches in diameter located entirely within a public right-of-way or an easement;

(3) Construction of utility lines equal or less than eight inches in diameter located totally within a public right-of-way;

(4) Construction of turning lanes from each side of a median on a divided arterial;

(5) Construction of intersection improvements;

(6) Widening a public street to provide a deceleration lane where no additional right-of-way is required;

(7) Depositing less than two feet of earth fill on sites not located in the 100 year floodplain, and where no fill will be deposited within the dripline of a protected tree;

(8) Construction of a boat dock as an accessory use to a single-family or duplex residential use, where no shoreline modification or dredging is necessary; or

(9) Construction or reconstruction of a retaining wall less than 100 feet in length and eight feet in height, with back fill which does not reclaim substantial land, except that which has eroded due to failure of an existing retaining wall.

(10) Any other minor site activities similar to those listed in subsections (a)(1) through (a)(9), as determined by the Director.

(b) The Director may waive any submittal requirement for a small project which, in the Director's opinion, is not essential in a particular application for the applicant to demonstrate compliance with this Land Development Code. The Director shall maintain a record of the submittal requirements which were waived.

(Am. Ord. 891214-O; Am. Ord. 910110-J, eff 1-20-91; Am

ACTING CITY MANAGER'S LETTER OF TRANSMITTAL

DRAFT POLICY BUDGET, 1994-95



June 22, 1994

Mayor and City Council:

I am pleased to present the Draft Policy Budget for Fiscal Year 1994-95. This policy budget is the framework for the proposed budget to come in August. It:

- ⇒ Holds the line by assuming the effective tax rate
- ⇒ Continues to increase public safety services
- ⇒ Focuses on basic City services
- ⇒ Supports the City Council's priority areas of

Youth, Family and Neighborhood Vitality

Quality of Life and Environment

Modern Infrastructure

Economic Development

Strategic Partnerships

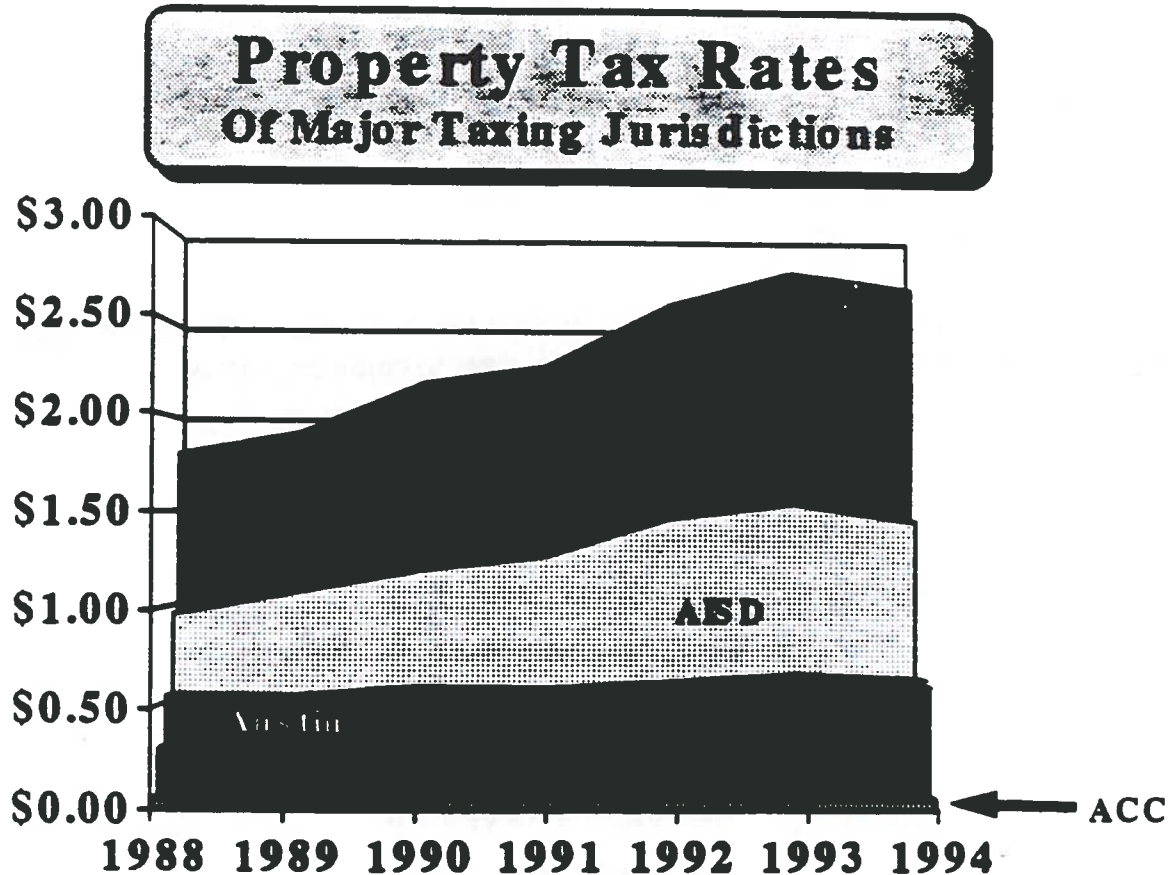
TOUGH BUDGET DESPITE RECOVERY

The Austin economy is booming with low unemployment and rapidly increasing property values. Part of that economic growth is also reflected in higher City revenue, particularly sales tax revenue. Sales tax revenue has shown consistent growth in the current year and is projected to produce \$3 million more than budgeted by current year end. The City Financial Forecast projected additional growth of \$6.8 million in 1994-95 for a total of \$79.9 million, the largest single source of revenue for our general government operations.

A focus of attention for many Austin citizens has been the continued increase in property values. Overall growth and property values is estimated at 10%, with some property increasing much more for a total property value of \$19.7 billion.

At Council's direction, this proposal assumes the effective tax rate which lowers the tax rate to offset average property value increases. As a result, the only revenue increase the City realizes is on new property, an estimated less than \$3 million. We will receive the final tax roll and average property value increases in late July.

Although the City's tax rate has remained relatively stable, Austin area taxing jurisdictions have steadily increased rates. The figure below illustrates the increasing tax burden.



Although the Draft Policy Budget assumes the effective tax rate, increasing needs also dictate recommended fee increases, including:

- ⇒ The first electric rate increase since 1989. The Electric Utility's policy budget assumes increases for residential and commercial customers.
- ⇒ A \$1.15 increase in solid waste collection fees for residential customers, bringing the fee from \$11 to \$12.50. The proposed commercial customer rate is up 10.5%.
- ⇒ A 4.5% wastewater fee increase, resulting in a \$2 per month increase for the average residential customer.
- ⇒ A 2% increase in the drainage fee to fund maintenance of habitat preserves in the Balcones Canyonlands Conservation Plan (BCCP).

Parks and Recreation—1994-95

Summary

The Draft Policy Budget responds to the Council priority for Youth, Family and Neighborhood by keeping all related programs intact.

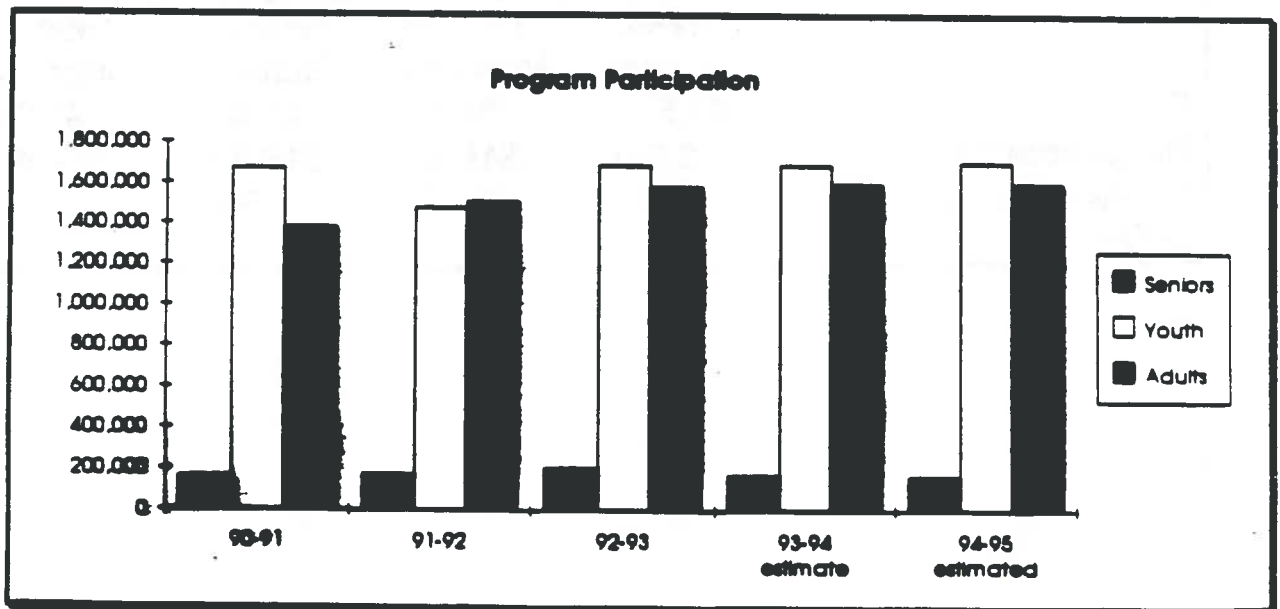
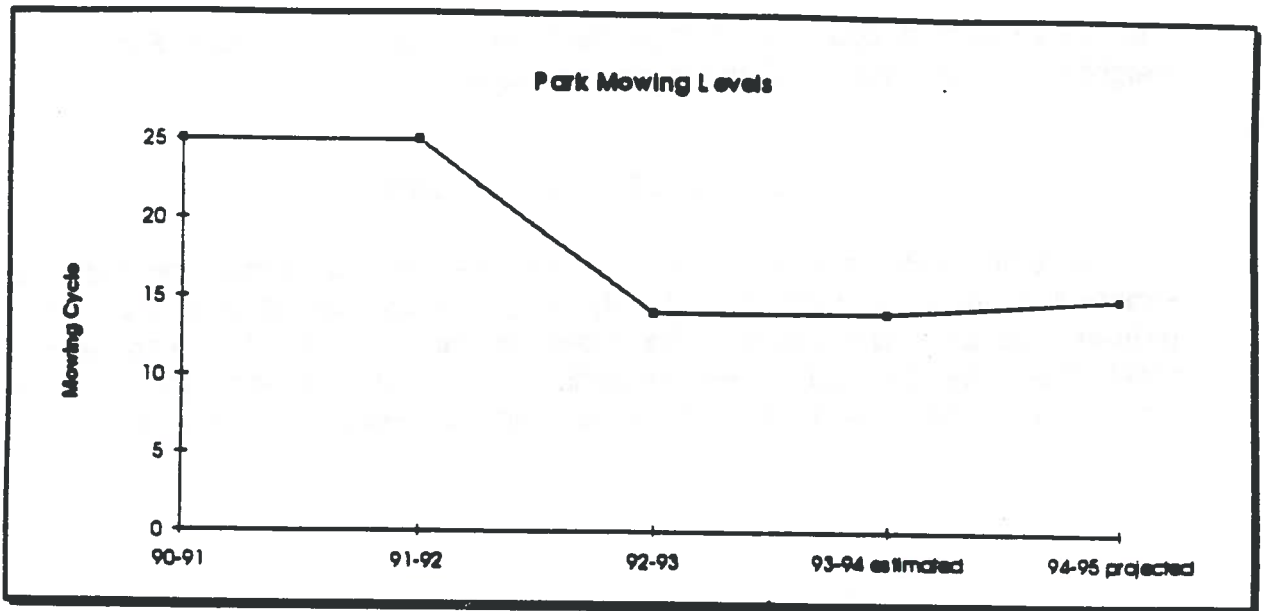
Departmental Goals

The goals of the Parks and Recreation Department include enhancing customer experiences, strengthening youth, family, and neighborhood, through community partnerships and contributing to the quality of life in Austin. We also seek to meet the City Council goals regarding affirmative action and minority procurement. We seek to attain these goals at the lowest possible cost.

	1992-93	1993-94	1993-94	1994-95
	Actual	Amended	Estimate	Proposed
Revenue	\$1.5 m	\$1.6m	\$1.6m	\$1.6m
Requirements	\$18.2m	\$18.8m	\$18.8m	\$18.4m
Full-time Equivalents (FTEs)	371	389	389	386

Parks and Recreation—1994-95


Key Indicators



Parks and Recreation—1994-95

Major Funding Changes

Expenditure Changes

- 
- 1 Transfers six positions to Golf, eliminates one position, and reduces support for special events, special mowing and hauling request, election support and increases the mowing frequency of the central corridor. (\$194,000)
 - 2 Eliminates four management positions. (\$208,000)
 - 3 Eliminates one position and increases the Park Police overtime budget. (\$27,000)
 - 4 Creates a new Division with nine employees to manage and maintain the 15,000 acres of the Balcones Canyonlands Preserves. \$320,000
 - 5 Eliminates funding for capital equipment. (\$27,000)
 - 6 Provides funding for the maintenance of the grounds for the new South Austin senior center. \$20,000
 - 7 Provides funding for the maintenance of new medians and triangles. \$7,000
 - 8 Eliminates alternative pay funding. (\$58,000)
 - 9 Increases park mowing cycles from 14 to 15 days in the outer perimeters of the city. (\$23,000)
 - 10 Funds increases in insurance costs for part-time employees. \$17,000
 - 11 Provides funding for conversion of the main office phone system to the North American Dial Plan. \$5,000
 - 12 Provides funding for call back pay. \$10,000
 - 13 Eliminates one time funding of 1993 Aqua Festival debts to vendors and suppliers. (\$212,000)

Parks and Recreation—1994-95

Policy Budget Issues

Programs for people with disabilities will be offered at 12 new sites. A wheelchair accessible bus and sign language interpretive services are needed to fulfill this service requirement.

Resources to continue the Trail of Lights at the current level are insufficient due to the unusual cost of repairing vandalized exhibits, lost sponsorship dollars and the need to provide a higher level of security.

Recommendation: Provide \$50,000 for a wheelchair bus and \$50,000 for the Trail of Lights.

The entire park system needs renovating and repair. Failure to renovate or replace, pool equipment, parking lots, roads, and to provide ball field lighting could result in less pool time, lack of playgrounds and underutilized athletic fields. Repairs and renovations will also contribute to safer recreational use of the parks system.

Recommendation Add \$609,000 for deteriorating park and infrastructure needs. (Renovate Fiesta Gardens - \$130,000 and the South Austin Optimist concession stand in Garrison Park - \$40,000: replace the parking lots/roads at Mary Moore Searight - \$150,000, Montopolis practice fields - \$80,000 and Govalle park - \$40,000: install security lighting at 16 little league fields - \$19,000: increase pool painting - \$34,000: replace a controller and pump at Givens pool - \$9,000: convert Northwest and Garrison pools from liquid to gas chlorination - \$106,000: and increase funding for pool hazardous materials permits - \$1,000.)

Parks and Recreation—1994-95

Policy Budget Issues

Facilities coming on line

The Draft Policy Budget does not provide funding for operations and maintenance of new facilities scheduled to come on line in 1994-95. These facilities are in areas where a contractor would provide maintenance. Without funding, the department will not be able to maintain these new facilities without decreasing the frequency of mowing for the rest of the city.

Recommendation : Provide \$95,000 to maintain the following new facilities/amenities scheduled to come on line in 1993-94.

Colony Park - new basketball courts, playscapes, parking lot and trails.

Rutland Park - new trails, playscapes, entry portals and basketball courts.

Lott Park - new play equipment

Bull Creek Park - development of the Bull Creek greenbelt to include new trails, rest stops and litter receptacles.

Sanchez Park - landscaping improvements, new entry pavilions and new trails.

Colorado River Park - signage, security fencing and new trails.

Dick Nichols & Dove Springs parks: electric, water and wastewater costs for new restrooms, irrigation, sports and security lighting.

Page Three

RESTORATION PLAN

As discussed above, all disturbed areas as a result of construction activities will be permanently restored per the City of Austin "Construction in Parks Specifications". A specific restoration plan for the various areas of Givens Park will be submitted to the Parks and Recreation Department for approval prior to construction. Permanent protection to access to creek and creek banks will be provided from 12th street to the access road by a four (4) foot high black PVC coated chain link fence along the top of the improved channel.



ADAPT

FREE OUR PEOPLE

1339 LAMAR SQ. DR. #B AUSTIN, TEXAS 78704 (512) 442-0252

Michael J. Heitz. Director
Parks and Recreation Dept.
City of Austin
PO Box 1088
Austin, TX 78767

July 12, 1994

Dear Mike,

We received the updated information about your ADA Transition Plan, the neighborhood parks, concessions, list of facilities built since 1973, and the 1991 park accessibility surveys. Thank you for getting us this information.

As we discussed in June, although we appreciate the information you sent us, ADAPT still wants a response to our settlement letter sent to Connie Ode May 19, 1994. In case, for some reason, you did not get a copy I am enclosing one. We have received no response on this to date from Ms. Ode or from your Department, although Ms. Ode promised our attorney Virginia Raymond that she would have a response to that letter by June 24, 1994.

As I explained to you before, ADAPT does not want to have to go to trial, but we do want real compliance with ADA and Section 504 of the Rehabilitation Act of 1973. Without a response we really do not have a way to measure what PARD is willing to do. We would appreciate a response as soon as possible.

Sincerely,

Stephanie Thomas. Organizer

cc. Bruce Todd. Mayor City of Austin
Gus Garcia. Council Member
Max Nofziger, Council Member

Ronney Reynolds, Council Member
Brigid Shea, Council Member
Jackie Goodman, Council Member
Eric Mitchell, Council Member
Stewart Strong, PARD Principle Planner
Jesus Garza, City Manager
Oscar Rodriguez, Assistant City Manager
Connie Ode, City Attorney
Dolores Gonzalez, City ADA Coordinator
Phil Friday, Chairperson PARD Board of Directors
Virginia Raymond, Advocacy Inc.
Scot Roberts, Planning Commission Chair
Darrell Pierce, Planning Commission Vice-Chair
Cathy Vasquez-Revilla, Secretary - Planning Commission
Frances Martinez, Asst. Secretary - Planning Commission
Mike Rivera, Parliamentarian - Planning Commission
Sid Sanders, Planning Commission
Brooks Kasson, Planning Commission
Rosemary Sheffield, Planning Commission
Jean Mather, Planning Commission

Settlement Proposal
ADAPT of Texas, Karen Greebon, Robert Kafka, Doris Standlee,
James Templeton and Stephanie Thomas v. City of Austin
May, 1994

Definitions:

"City" means City of Austin.

"PARD" means the Parks and Recreation Department of the City of Austin.

"ADAAG" means the "ADA Accessibility Guidelines" which set guidelines for accessibility to places of public accommodation and commercial facilities by individuals with disabilities, as required by the Americans with Disabilities Act, 42 U.S.C. 12101 et seq. and its implementing regulations.

"UFAS" means the "Uniform Federal Accessibility Standards" which present uniform standards for the design, construction, and alteration of buildings so that physically handicapped persons will have ready access to and use of them in accordance with the Architectural Barriers Act, 42 U.S.C. §4151 et seq.

"ANSI" standards are those accessibility standards promulgated by the American National Standards Institute, 1430 Broadway, New York, New York 10018.

The term "accessible" means accessible to persons with disabilities, as required by the Americans with Disabilities Act and the Rehabilitation Act of 1973 and their implementing regulations. "Accessible" facilities are ones which meet the ADAAG or UFAS standards, at a minimum.

The term "inaccessible" means inaccessible to persons with disabilities, as required by the Americans with Disabilities Act and the Rehabilitation Act of 1973 and their implementing regulations. "Inaccessible" facilities are those which do not meet either ADAAG or UFAS standards.

"Fully accessible" means accessible to and usable by persons with disabilities.

AGREEMENT:

I. NO NEW INACCESSIBLE FACILITIES PURCHASED OR LEASED

The City agrees that no new inaccessible facilities will be built or bought to house any PARD program or activity. The City agrees that it will not enter into any leases or contracts to provide any PARD activity or program at any inaccessible location. The City

agrees that it will not make any alterations to any facility owned, managed, or leased by the City without making modifications to bring that facility fully into compliance with ADAAG guidelines.

II. BASIC ACCESS

The City shall ensure that every City of Austin park (all 167) has basic access features according to the following timetable:

- A) Within six months of the signing of this settlement agreement, every park in the City of Austin which is owned, leased, managed, or maintained by the City, or in which PARD programs or activities take place, will have:
 - 1) Curb cuts;
 - 2) Reserved handicapped or disabled parking close to an accessible park entrance (in any park where there is any parking);
 - 3) Signage describing the location of accessible trails, parking, restrooms, water fountains, playgrounds, picnic tables, TDD/TYYs, or other amenities (if any); and
 - 4) Signage for visually impaired people (where there are signs for anyone).
- B) By nine months of the signing of this agreement, every park in the City of Austin owned, leased, managed or maintained by the City, or in which PARD programs or activities take place, will have:
 - 1) Accessible restrooms, including accessible portable restrooms where portable restrooms are provided;
 - 2) Accessible telephones, including TTY/TDDs;
 - 3) Accessible water fountains.

III. FULL ACCESS

The City agrees to ensure that the parks and facilities listed below will meet a higher standard of accessibility, than that described in part I above. We will refer to this higher standard as "full access." "Full access" means that each park, program, and facility under this standard will be fully accessible to, and usable by, people with disabilities. This will

mean, for example, that all park facilities and equipment -- including playground equipment, sports or playing fields, swimming pools, picnic tables, recreational courts -- will be fully accessible to, and usable by, persons with disabilities.

- A) The City shall ensure that all "one of a kind" or "specialty" parks are full accessible within twelve months of the signing of this settlement agreement. The parks and facilities currently considered to be "one of a kind" or "specialty parks" in this category are the following:

- 01) Austin Area Garden Center
- 02) Austin Nature Center
- 03) Fiesta Gardens
- 04) Jourdan Bachman Pioneer Farm
- 05) Krieg Fields
- 06) Mayfield Park
- 07) Barton Springs
- 08) Emma Long Metropolitan Park
- 09) Walter Long Park
- 10) Festival Beach
- 11) Pease Park
- 12) Waterloo Park
- 13) Treaty Oak
- 14) Umlauf Sculpture Garden
- 15) Pioneer Farm
- 16) Mt. Bonnell
- 17) Symphony Square
- 18) Republic Square
- 19) Wooldridge Square
- 20) Brush Square
- 21) Schieffer Tract
- 22) Walsh Boat Landing
- 23) Downs Mason athletic building
- 24) Springbrook Center
- 25) Austin Recreation Center
- 26) Northwest Recreation Center
- 27) Murchison Pool
- 28) Kennemer Pool
- 29) Canyon Vista Pool
- 30) Deep Eddy Pool and Eilers Park (this is the one location not listed on the outline given to you on March 7, 1994).

- B) All eight metropolitan parks will be fully accessible.
- C) Twenty-five percent (25%) of the fourteen district (14) parks will be fully accessible.
- D) Twenty-five percent (25%) of the sixty-three (63) neighborhood parks will be fully accessible.
- E) Twenty-five percent (25%) of the ten (10) nature preserves will be fully accessible.
- F) Twenty-five percent (25%) of the wild basin and greenbelt areas will be fully accessible.
- G) Thirty percent of the school playgrounds will be fully accessible. Park playgrounds are to be considered part of the park in which they are located.
- H) There will be full accessibility at 25% of the following facilities for particular programs, or at least one location hosting the programs listed below (whichever is greater):
 - 01) Golf courses (Hancock, Jimmy Clay, Lions, and Morris Williams)
 - 02) Tennis courts (Austin High, Caswell, Pharr, South Austin and other courts and centers)
 - 04) Frisbee
 - 05) Volleyball
 - 06) Boating (all kinds) (Town Lake Rowing Center, canoeing and rental, rowing, sailing and rental)
 - 07) Boat ramp/launches, boat lanes
 - 08) Park playgrounds and playscapes
 - 09) Swimming pools and beaches (66)
 - 10) Picnic areas
 - 11) Softball fields
 - 12) Baseball fields
 - 13) Soccer fields
 - 14) Multi-use fields
 - 15) Garden center
 - 16) Nature center
 - 17) Party houses
 - 18) Arts center
 - 19) Basketball courts

- 20) Shuffleboards
- 21) Four square courts
- 22) Fishing
- 23) Amphitheaters
- 24) Archaeological sites
- 25) Archery
- 26) Bandstand(s)
- 27) Camping
- 28) Miniature train
- 29) Motorcycle track
- 30) Veloway
- 31) Weight rooms
- 32) Bat watching Areas
- 33) Fitness courses

J) League sports facilities. There will be full access at 100% of all fields and facilities where league sports (including but not limited to softball, basketball, soccer, and volleyball) are played.

K) There will be full access at all of the following facilities:

- 1) All recreation centers
- 2) All Senior Activity Centers
- 3) Coliseum
- 4) Theatre
- 5) Old Bakery
- 6) Haskell House
- 7) Mayfield House
- 8) Elisabet Ney Museum
- 9) Carver Museum

IV. CONTRACTS WITH VENDORS

The City shall **immediately** review all pending and existing contracts for events, vendors, etc. (dinosaurs, Aqua Fest, rowing, Eeyore's picnic, etc.) to ensure that such contracts require vendors to make their goods and services accessible to people with disabilities.

- A) The City shall **immediately**, on or before the signing of this settlement agreement, provide Plaintiffs with true and correct copies of ongoing contracts with vendors.
- B) New Contracts and contract renewals: New vendors and renewing vendors must, as part of the contracting process, attend a city-conducted training on ADA compliance/accessibility training. **These trainings shall begin within**

three months of signing of this settlement agreement.

- 1) Plaintiffs will have the opportunity to provide input to the training.
- 2) The training will include components on the meaning of accessibility for people with a variety of disabilities, including visual and hearing impairments, mental disabilities (emotional and cognitive) as well as mobility impairments.
- C) There will be specific and real consequences for contractors who violate the City contract provision requiring their goods and services to be accessible to people with disabilities.
- D) Such consequence will be imposed within three months of a report of a violation.
- E) Vendors who violate the contract provision concerning accessibility of goods and services to people with disabilities will have their contracts terminated.
- F) Any financial penalties assessed for contract violations shall be put in an "access fund" to help pay for future accessibility upgrades to parks and recreation programs and facilities.
- G) The City shall create, staff, and publicize a mechanism for promptly investigating complaints of contract violations with respect to accessibility, and for promptly resolving accessibility problems or terminating the contract(s) of violators. The City shall create, staff, and publicize a telephone number at which members of the public may report accessibility problems. This complaint and investigation process, including the telephone number for reporting problems, shall be made operational within one month of the signing of this agreement.

V. PARD POLICIES

The City shall **immediately** rewrite all PARD policies as needed to ensure that they do not discriminate against people with disabilities. No new policies will be created which discriminate against people with disabilities. ADAPT will see and review all existing policies. This clause will be effective as of the date of the signing of the settlement agreement.

VI. TRAILS

Within six months of the signing of this agreement, the City shall ensure that there are trails throughout the parks and recreation system which meet the varying needs of the public, including people with disabilities. The City shall ensure that at least twenty-five percent (25%) of the routes are fully accessible to, and usable by, persons using wheelchairs. Such fully accessible routes shall be laid out in a usable manner; i.e., accessible trails will not be interrupted by inaccessible portions.

Within six months of the signing of this agreement, the City shall code its trails according to three levels of accessibility and difficulty: fully accessible/easy; somewhat accessible/moderate difficulty; inaccessible.

Within six months of the signing of this agreement, the City shall create and distribute maps for use by the public, which describe the level of accessibility or difficulty of the trails. The City shall create and distribute updated information periodically, or whenever major changes are made.

VII. PUBLIC INFORMATION

- A) **Map.** The City shall create, distribute, and make available to the public, a map of access features in PARD programs and facilities as of January 1995. This map will be similar to the existing green Austin Parks and Recreation Facilities map. This map will contain information about which parks have "basic accessibility" features (which will be all parks) and which parks are "fully accessible" (for example, location of accessible picnic tables, TTD/TTYs, accessible pools, adaptive playground equipment) the level of difficulty or accessibility of trails, and wilderness areas without amenities for any people (disabled or non-disabled).
- B) **Telephone number.** The City shall create, staff, and publicize a telephone number which members of the public may call to get information about accessibility features at specific park facilities and programs. This telephone number could be the same as described in IV-G above. This telephone number would be staffed and operational within one month of the signing of this settlement agreement.
- C) **Alternative formats.** The City shall make all existing public information materials about PARD programs and facilities available in alternative formats (such as Braille, large print, tape, etc.) within one month of the signing of this settlement agreement. The City will make an ongoing commitment to make all public information materials available in a variety of alternative formats, as the public information materials are created.

VIII. POLICY ON "THERAPEUTIC" OR OTHER SEGREGATED PROGRAMS

"Therapeutic recreation programs," or other programs which segregate disabled people from other members of the public, are acceptable only as additional programs. They are not acceptable as a substitute to integrated programs. They will not be the only recreational option for disabled people in the City of Austin, but only available as a choice. People with disabilities will not be steered or tracked into therapeutic programs if they request information about any recreational activity, but given information about all programs that the City offers.

IX. ATTORNEYS' FEES AND COSTS

The City, will pay reasonable attorneys' fees and costs to Plaintiffs.

August 1994

City of Austin Corporate Calendar

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2 9:00 CMO Mtg 1:00 Bracken- ridge Goverance Wksn	3 8:30 Inf Tech Plcy Brd 10:00 Council WkSn/Proposed Budget Presentation No Dept Dir Mtg	4 10:00 Council Exec Session 1:00 Council Mtg	5 9:00 CMO Mtg 12:00 Budget Presentation to Boards and Commissions	6
7	8	9 9:00 CMO Mtg	10 9:00 BASICS Steer Comm 10:30 Dept Dir Mtg 1:30 Council WkSn	11 10:00 Council Exec Session 1:00 Council Mtg, 5:00 Budget Public Hearing	12 9:00 CMO Mtg 1:30 Community Action Network (CAN)	13 10:00 Council Cmty Outreach Meeting Uniform Election Date
14	15	16 9:00 CMO Mtg 12:00 Mgt Forum	17 10:00 Council Budget Wksn 7:30 Council Dinner No Dept Dir Mtg	18 10:00 Council Exec Session 1:00 Council Mtg	19 9:00 CMO Mtg 10:00 BASICS Steer Comm 1:00 Team Day	20
21	22	23 9:00 CMO Mtg	24 10:00 Council Budget WkSn No Dept Dir Mtg	25 10:00 Council Exec Session 1:00 Council Mtg 3:00 Qual Netwk	26 9:00 CMO Mtg	27
28	29	30 9:00 CMO Mtg	31 10:30 Dept Dir Mtg 1:00 Council BudgetWkSn			

July

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Council Work Session Schedule for August 1994

<i>Date</i>	<i>Time</i>	<i>Topics</i>
August 2, 1994	1:00-3:00	Brackenridge Governance Options
August 3, 1994	10:00-5:00	Presentation of Proposed Budget
August 10, 1994	1:30-5:00	Performance Report for August 1994, Third Quarterly Report
August 17, 1994	10:00-5:30	Infrastructure Planning, Public Works, Drainage, ECSD, Child Safety, Transportation. Solid Waste, Aviation, Water/Wastewater
	5:30-7:30	Determine Bond Sale Affirmative Action -Health -Public Works & Trans
	7:30-9:00	Council Working Dinner
August 24, 1994	10:00-5:00	Public Safety- Police, Fire, EMS, Health - Brackenridge, Health/Hospital Recreation/Culture - Parks and Recreation and Library
August 31, 1994	1:00-5:00	Tourism - Convention Center, ACVB Wage/Benefits

September 1994

City of Austin Corporate Calendar

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday																																																																																											
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Council Work Session Schedule for September 1994

<i>Date</i>	<i>Time</i>	<i>Topics</i>
September 7, 1994	1:00-5:00	Revenue Update for Budget Adoption Support Services Municipal Court
September 8, 1994	2:00	Bond Sale
September 9, 1994	1:00 - 5:00	Budget Worksession
September 12, 1994	1:00	1st Reading on Adopted Budget
September 13, 1994	1:00	2nd Reading on Adopted Budget
September 14, 1994	1:00	3rd Reading on Adopted Budget
September 21, 1994	Work Session Canceled	
September 28, 1994	1:30-5:00	Audit/Finance Health/Hospital